

## **STATUTORY STATUS DISCLOSURE INSTRUMENT 2003**

### **Powers exercised**

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions of the Financial Services and Markets Act 2000 (the “Act”):

- (1) section 138 (General rule-making power);
- (2) section 145 (Financial promotion rules);
- (3) section 149 (Evidential provisions);
- (4) section 156 (General and supplementary powers); and
- (5) section 157(1) (Guidance).

B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

### **Commencement**

C. This instrument comes into force on 1 March 2003.

### **Amendments to the Handbook**

D. (1) GEN is amended by inserting, after GEN 3, the provisions in Annex A to this instrument; and

- (2) COB, AUTH, CRED, ECO, PROF and the Glossary are amended in accordance with Annex B to this instrument.

### **Citation**

E. This instrument may be cited as the Statutory Status Disclosure Instrument 2003.

By order of the Board  
16 January 2003

## Annex A

### Amendments to the General provisions

After Chapter 3, insert the following new chapters:

#### General provisions

#### Chapter 4

#### Statutory status disclosure

##### 4.1 Application and purpose

##### Who? What?

4.1.1 R This chapter applies to every *firm* and with respect to every *regulated activity*, except that:

- (1) for an *incoming ECA provider*, this chapter does not apply when the *firm* is acting as such;
- (2) for an *incoming EEA firm* which has *permission* only for *cross-border services* and which does not carry on *regulated activities* in the *United Kingdom*, this chapter does not apply;
- (3) for an *incoming firm* not falling under (1) or (2), this chapter does not apply to the extent that the *firm* is subject to equivalent rules imposed by its *Home State*; and
- (4) for a *UCITS qualifier*, this chapter does not apply.

##### Where?

4.1.2 R *GEN 4.3* (Letter disclosure) applies in relation to activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *United Kingdom*, subject to *GEN 4.3.4 R* (Exception: insurers).

4.1.3 R *GEN 4.4* (Business for private customers from non-UK offices) applies in connection with a *regulated activity* carried on from an establishment of the *firm* (or its *appointed representative*) that is not in the *United Kingdom*.

##### 4.2 Purpose

4.2.1 G The purpose of this chapter is to amplify *Principle 7* (Communications with clients), which requires a *firm* to pay due regard to the information needs of its *clients*. This chapter requires the provision of appropriate minimum information about the identity of a *firm's* regulator in a way which is as consistent as practicable across the whole range of activities regulated by the *FSA*. This assists in the achievement of

the *regulatory objectives* of consumer protection, public awareness and market confidence.

4.2.2 G There are other pre-contract information requirements outside this chapter, including:

- (1) for *financial promotions*, in *COB 3* (Financial promotion);
- (2) for *designated investment business*, in *COB 4.2* (Terms of business and client agreements with customers), *COB 5.1* (Polarisation), *COB 5.5* (Information about the firm), *COB 6.1* to *COB 6.5* (Product disclosure) and *COB 9* (Client assets);
- (3) for *general insurance contracts* and *pure protection contracts*, in *COB 6.8* (Insurance contracts: life and general);
- (4) for *electronic commerce activities by outgoing or domestic ECA providers*, in *ECO 2* (Outgoing ECA providers) and *ECO 3* (Domestic (and non-EEA) ECA providers).

### **4.3 Letter disclosure**

#### **Disclosure in letters to private customers**

4.3.1 R A *firm* must take reasonable care to ensure that every letter (or electronic equivalent) which it or its *employees* send to a *private customer*, with a view to or in connection with the *firm* carrying on a *regulated activity*, includes the disclosure in *GEN 4 Ann 1R*.

4.3.2 G For a *UK domestic firm*, the required disclosure in *GEN 4 Ann 1R* is “Authorised and regulated by the Financial Services Authority”.

4.3.3 G (1) *GEN 4.3.1R* (Disclosure in letters to private customers) covers letters delivered by hand, sent by *post* and sent by fax and also electronic mail, but not text messages, account statements, business cards or compliment slips (used as such).

(2) *GEN 4.3.1R* (Disclosure in letters to private customers) applies in relation to letters sent by any of the *firm’s employees*, which includes its *appointed representatives* and their *employees*.

(3) *Firms* are likely to find it convenient to include the required disclosure in their letterhead.

#### **Exception: insurers**

4.3.4 R *GEN 4.3.1 R* (Disclosure in letters to private customers) does not apply in relation to:

- (1) *general insurance business* if:

- (a) the *State of the risk* is an *EEA State* other than the *United Kingdom*; or
  - (b) the *State of the risk* is outside the *EEA* and the *client* is not in the *United Kingdom* when the *contract of insurance* is entered into; or
- (2) *long-term insurance business* if:
- (a) the *client* is *habitually resident* in an *EEA State* other than the *United Kingdom*; or
  - (b) the *client* is *habitually resident* outside the *EEA* and is not present in the *United Kingdom* when the *contract of insurance* is entered into.

**Exception: authorised professional firms**

4.3.5 R For an *authorised professional firm*, GEN 4.3.1 R (Disclosure in letters to private customers) does not apply with respect to its *non-mainstream regulated activities*.

**4.4 Business for private customers from non-UK offices**

4.4.1 R (1) If, in any communication:

- (a) made to a *private customer*;
- (b) in connection with a *regulated activity* carried on from an establishment of the *firm* (or its *appointed representative*) that is not in the *United Kingdom*;

the *firm* indicates that it is an *authorised person*, it must also, where relevant, and with equal prominence, give the information in (2) in writing.

- (2) The information required is that in some or all respects the *regulatory system* applying will be different from that of the *United Kingdom*. The *firm* may also indicate the protections and complaints or compensation arrangements available under another relevant system of regulation.
- (3) A *firm* need not provide the information required by (1) if it has already provided it in writing to the *private customer* to whom the communication is made.

- 1 Table Letter disclosure  
This table belongs to GEN 4.3.1R

Type of firm		Required disclosure (Note 5)
(1)	<i>UK domestic firm; or overseas firm (which is not an incoming firm)</i>	“Authorised and regulated by the Financial Services Authority” (Note 1)
(2)	<i>Incoming firm without a top-up permission</i>	“Authorised by [name of <i>Home State regulator</i> ] and regulated by the Financial Services Authority for the conduct of UK business” (Notes 1, 2, and 3)
(3)	<i>Incoming firm with a top-up permission</i>	“Authorised by [name of <i>Home State regulator</i> ] and by the Financial Services Authority; regulated by the Financial Services Authority for the conduct of UK business” (Notes 1, 2 and 3)
(4)	<i>Appointed representative of a firm</i>	“[Name of <i>appointed representative</i> ] is an appointed representative of [name of <i>firm</i> ] which is [then continue with the required disclosure of the <i>firm</i> ]” (Note 4)
(5)	<i>Society of Lloyd’s</i>	“Authorised under the Financial Services and Markets Act 2000”
<p><b>Note 1 =</b> A <i>firm</i> must use the formulation “Financial Services Authority” and not the abbreviated formulation “FSA”.</p> <p><b>Note 2 =</b> An <i>incoming firm</i> is free to translate the name of its <i>Home State regulator</i> into English if it wishes. In doing so, it must ensure that the State in which the regulator is based is clear.</p> <p><b>Note 3 =</b> An <i>incoming firm</i> may state the type of business that it conducts, for example, that it is regulated by the Financial Services Authority for the conduct of investment business in the UK.</p> <p><b>Note 4 =</b> If the <i>appointed representative</i> has more than one <i>principal</i>, the disclosure must relate to the <i>principal</i> or <i>principals</i> responsible for the <i>regulated activity</i> or <i>activities</i> concerned.</p> <p><b>Note 5 =</b> Any <i>firm</i> listed in this table is permitted to add words to the relevant required disclosure statement but only if the <i>firm</i> has taken reasonable steps to satisfy itself that the presentation of its statutory status will, as a consequence, remain clear, fair and not misleading. For example, an <i>authorised professional firm</i> may wish to make it clear that it is also regulated by its professional body.</p>		

**General provisions**  
**Chapter 5**  
**The FSA logo**

**5.1 Application and purpose**

**Application**

5.1.1G This chapter contains *guidance* for *firms* and *appointed representatives* on the circumstances in which the *FSA* permits *firms* and their *appointed representatives* to reproduce the FSA logo.

**Purpose**

5.1.2G The FSA logo is a registered UK service mark, with number 2150560, and is the property of the *FSA*. It is also subject to copyright and may be used or reproduced with permission of the *FSA* only. If the FSA logo is reproduced or otherwise used by any person without such permission the *FSA* may seek to enforce its rights over its property through the Courts.

5.1.3G *GEN 5 Ann 1G* is a general licence, which sets out the circumstances in which the *FSA* permits *firms* and their *appointed representatives* to reproduce the FSA logo. A *firm* or an *appointed representative* need not apply for an individual licence if it uses or reproduces the FSA logo in accordance with the general licence.

5.1.4G The *FSA* has no policy to allow use of the FSA logo by a *firm* or *appointed representative* other than as set out in *GEN 5 Ann 1 G*. If, however, a *firm* or *appointed representative* wishes to use or reproduce the FSA logo other than in accordance with the general licence, it may apply to the *FSA* for an individual licence, giving full reasons why it considers the *FSA* should grant the licence.

**Licence for use of the FSA logo  
by authorised firms and appointed representatives**

**Application**

1.1 The *FSA* grants this licence to *firms* and *appointed representatives*.

**The FSA logo**

2.1 The FSA logo is made up of two elements:

- (1) the symbol (the scroll and globe device); and
- (2) the FSA letters.

2.2 Together, these elements make up the registered UK service mark, with number 2150560.

2.3 There are two versions of the FSA logo, version A and a smaller version B in which the scroll has been simplified.

2.4 Copyright subsists in the FSA logo.

2.5 Copies of the FSA logo that are capable of being reproduced for printing can be found on the *FSA*'s website at [http://www.fsa.gov.uk/pubs/other/copies-\\_of\\_the\\_fsa\\_logo/index.html](http://www.fsa.gov.uk/pubs/other/copies-_of_the_fsa_logo/index.html).

**Permission to use the FSA logo**

3.1 A *firm* and its *appointed representatives* are permitted to use the FSA logo:

- (1) as part of a statement by that *person*, in a letter or electronic equivalent, that the *firm* is authorised or that it is regulated by the *FSA*, but only in connection with a *regulated activity* carried on from an establishment in the *United Kingdom*; or
- (2) if required to do so by the *FSA*.

3.2 The disclosure required by *GEN* 4.3.1 R (Disclosure in letters to private customers) is an example of a statement within paragraph 3.1 above.

3.3 Business cards, compliment slips, text messages, account statements and other similar documents are not letters (or electronic equivalents). Therefore, the licence does not extend to documents such as these.

## **Conditions on appearance of the FSA logo**

4.1 The permission in paragraph 3.1 is subject to the following conditions:

- (1) the regulatory mark ® is attached to the FSA logo;
- (2) the FSA logo and regulatory mark appear in black type, or reversed out white on a coloured background;
- (3) the FSA letters appear in type which is not more than three times the size of the accompanying script;
- (4) the two elements of the FSA logo appear together in the same way, and in the same proportion, as in the registered service mark;
- (5) the FSA logo is not redrawn in any way, or matched by a typesetter;
- (6) version B of the FSA logo is used only at sizes below 10mm in overall height; and
- (7) if the FSA logo is reproduced electronically, no hyperlink is incorporated.

## **Further conditions on the use of the FSA logo**

5.1 The permission in paragraph 3.1 is also subject to the conditions that any material, whether produced on paper or electronically, on which the FSA logo is displayed does not:

- (1) in any way imply that the *FSA* is endorsing the *firm* or its *appointed representatives* or products, services or communications (see also *GEN* 1.2.2R(1)); or
- (2) misrepresent the *firm's* or its *appointed representatives'* relationship with the *FSA* or present false information about the *FSA*; or
- (3) contain content that could be construed as distasteful, offensive or controversial; or
- (4) infringe any intellectual property or other rights of any *person* or otherwise not comply with any relevant law or regulation.



## **Use of the FSA logo by appointed representatives**

- 6.1 *Firms* and *appointed representatives* are reminded that an *appointed representative* is not a *firm*. Therefore, the permission in paragraph 3.1 does not extend to a statement made by an *appointed representative* about its own status. However, the effect of paragraph 3.1 is that an *appointed representative* is permitted to reproduce the FSA logo as part of a statement about the authorisation or regulation by the *FSA* of the *appointed representative's principal*, provided the other conditions of paragraph 3.1 and those of paragraphs 4.1 and 5.1 are met.

## **Commencement and duration**

- 7.1 This licence comes into effect on 1 May 2003.
- 7.2 The *FSA* may alter or revoke this licence at any time, by giving at least two months' notice on the *FSA's* website.

## **Interpretation**

- 8.1 This licence is to be interpreted in accordance with chapter 2 of the General provisions (Interpreting the Handbook) of the *FSA's* Handbook of Rules and Guidance. In particular, expressions in italics are defined in the Handbook Glossary.

## **Governing law and jurisdiction**

- 9.1 This licence is governed by and interpreted in line with English law. The courts of any jurisdiction in the United Kingdom have the exclusive jurisdiction to settle any dispute in connection with this licence.

## Annex B

### Amendments to GEN, COB, AUTH, CRED, ECO, PROF and the Glossary

In this Annex underlining indicates inserted text and striking through indicates deleted text.

#### General provisions

Transitional provisions

...

3 Table (2) Transitional provisions applying to GEN only

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
...					
<u>2</u>	<u>GEN 4.3.1 R</u>	<u>R</u>	<u>With respect to <i>designated investment business</i>, a firm is not required to comply with GEN 4.3.1 R until 1 October 2004; firms are permitted at any time during the transitional period to comply with the letter disclosure requirements in GEN 4.3.1 R.</u>	<u>From 1 March 2003 until 30 September 2004</u>	<u>1 March 2003</u>
<u>3</u>	<u>GEN 4.3.1 R</u>	<u>R</u>	<u>With respect to any <i>regulated activity other than designated investment business</i>, a firm is not required to comply with GEN 4.3.1 R until 1 March 2004; firms are permitted at any time during the transitional period to comply with the letter disclosure requirements in GEN 4.3.1 R.</u>	<u>From 1 March 2003 until 29 February 2004</u>	<u>1 March 2003</u>

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
<u>4</u>	<u>GEN 4.4.1 R</u>	<u>R</u>	<u>GEN 4.4.1 R does not apply to a firm with respect to the carrying on of any regulated activity other than designated investment business.</u>	<u>From 1 March 2003 until 29 February 2004</u>	<u>1 March 2003</u>

...

#### Schedule 6

#### Rules that can be waived

- 1 *GEN 1.2.2R (Referring to approval by the FSA) and the rules in GEN 4 (Statutory status disclosure) can be waived by the FSA under section 148 of the Act (Modification or waiver of rules). ...*

...

### Conduct of business sourcebook

#### Miscellaneous Transitional Rules

- 1 Table

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
... <u>4</u>	<u>COB</u>  <u>3.8.4R (3),</u> <u>3.9.7R (1),</u> <u>3.13.4R</u>		<u>Statutory status disclosure</u>  <u>A firm is not required to comply with the amendments to the rules in column (2) made by the Statutory Status Disclosure Instrument 2003 until 1 October 2004 in relation to a relevant financial promotion that was prepared before 1 March 2003 or where compliance was confirmed before 1 March 2003, provided it is communicated no later than 30 September 2004.</u>	<u>From 1 March 2003 until 30 September 2004</u>	<u>1 March 2003</u>
<u>5</u>	<u>COB</u>  <u>4.2.15E (2),</u> <u>4.3.15E (22),</u> <u>5.5.3R,</u> <u>5.5.5E,</u> <u>5.5.9R –</u> <u>5.5.12R</u>	<u>R,</u> <u>E,</u> <u>G</u>	<u>A firm is not required to comply with the amendments to the rules in column (2) made by the Statutory Status Disclosure Instrument 2003 until 1 October 2004; to the extent that a firm continues to rely upon terms of business (including a client agreement) given to or made with a client before 1 October 2004, the firm does not need to comply with the amendments to COB 4.2.15E made by that Instrument until the firm's terms of business is next updated.</u>	<u>From 1 March 2003</u>	<u>1 March 2003</u>

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
<u>6</u>	<u>COB 8.1.15E (2), 10.6.8E (1)</u>	<u>R</u>	<p><u>The amendments to COB 8.1.15E (2) and COB 10.6.8E (1) and (8) made by the Statutory Status Disclosure Instrument 2003 do not apply to a firm:</u></p> <p><u>(1) in relation to a confirmation of a transaction under COB 8.1 (Confirmation of transactions); and</u></p> <p><u>(2) in relation to the scheme documents referred to in COB 10.6 (Scheme documents for an unregulated collective investment scheme);</u></p> <p><u>until, as appropriate, the firm's system for producing confirmations or the scheme documents are next updated by the firm.</u></p>	<u>From 1 March 2003</u>	<u>1 March 2003</u>

...

1.3.4 R Only the following provisions of COB apply with respect to the carrying on of *inter-professional business*:

...

(3A) COB 5.5 (Information about the firm), except COB 5.5.1R – COB 5.5.8R;

...

...

1.4 Replace the existing section with the following:

**1.4 General Application: where?**

1.4.1 G The *rules* in *COB 1.4* set out the maximum territorial scope of this sourcebook. Particular *rules* may have express territorial limitations.

**UK establishments: general**

1.4.2 R Except as set out in this section, this sourcebook applies in relation to activities carried on from an establishment maintained by the *firm* (or its *appointed representative*) in the *United Kingdom* only.

**Business with UK clients from non-UK offices**

1.4.3 R This sourcebook applies in relation to activities not within *COB 1.4.2R* carried on with or for a *client* in the *United Kingdom*, unless (if the office from which the activity is carried on were a separate *person*) the activity:

(1) would fall within the overseas persons exclusions in article 72 of the *Regulated Activities Order*; or

(2) would not be regarded as carried on in the *United Kingdom*.

1.4.4 R In addition to the situations in *COB 1.4.2 R* and *COB 1.4.3 R*, *COB 5.5.7R* (Overseas business for UK private customers) applies wherever the activity is conducted.

**Financial promotions**

1.4.5 R Notwithstanding *COB 1.4.2 R* and *COB 1.4.3 R*, the territorial scope of the *financial promotion rules (COB 3)* is as set out in *COB 3.3* (Application: where?).

**ISD investment firms: compensation information**

1.4.6 R In addition to the situations in *COB 1.4.2 R* and *COB 1.4.3 R*, *COB 5.5.9 R* to *COB 5.5.12 R* apply to a *UK firm* which is an *ISD investment firm* in relation to *passported activities* carried on by it from a *branch* in another *EEA State*.

**Long-term insurance business**

1.4.7 R In addition to the situations in *COB 1.4.2 R* and *COB 1.4.3 R*, *COB 6* (Product disclosure and the customer's right to cancel or withdraw), other than *COB 6.3* (Post-sale confirmation: life policies) and *COB 6.9* (With-profits guides), applies in relation to *long term insurance business* if the *habitual residence* of the *client* is in the *United Kingdom*.

## General insurance business

- 1.4.8 R In addition to the situations in *COB 1.4.2R* and *COB 1.4.3R*, *COB 6.8* (Insurance contracts: life and general) applies in relation to *general insurance business* if the *State of the risk* is the *United Kingdom*.

## ISD investment firms: custody services from EEA branches

- 1.4.9 R In addition to the situations in *COB 1.4.2 R* and *COB 1.4.4 R*, *COB 9* (Client assets) applies to a *UK firm* which is an *ISD investment firm* in relation to *passported activities* carried on by it from a *branch* in another *EEA State*.

## Electronic commerce activities and communications

- 1.4.10 R The territorial scope of this sourcebook is modified by *ECO* in relation to *electronic commerce activities* and *electronic commerce communications*.

- 1.4.11 G *COB 1.9* contains guidance on how this sourcebook is modified by *ECO*.

...

...

- 1.6.4 R Table Corporate finance business.  
This table belongs to *COB 1.6.3 R*

...

5.5 Information about the firm, except *COB 5.5.1R– COB 5.5.8R*

...

...

- 3.2.5 R Table Exemptions  
This table belongs to *COB 3.2.4R*

### Exemptions

This chapter does not apply to the following:

...

- (3) a *financial promotion communicated* from outside the *United Kingdom* which would be exempt under articles 30, 31, 32 or 33 of the *Financial Promotion Order* (Overseas communicators) if the office from which the *financial promotion* is *communicated* were a separate *unauthorised person* (but see *COB 5.5.7R* (Overseas business for UK private customers) and *GEN 4.4* (Business for private customers from non-UK offices));

...

...

**Non-real time financial promotions: clear, fair and not misleading; comparisons; restriction of information on compensation**

3.8.4 R (3) If a non-real time financial promotion includes any information about the protection available under the compensation scheme or any other compensation scheme established in another EEA State or otherwise, it must restrict this to factual references to the scheme (an example of a factual reference is set out in COB 5.5.11 G).

...

...

3.9.7 R Table: Direct offer financial promotions: particular information required  
This table belongs to COB 3.9.6R(2)

Direct offer financial promotions: particular information required  
(1) ~~A prominent statement that the firm which has communicated or approved the financial promotion is regulated or authorised by the FSA. Prominently, the required disclosure statement in GEN 4 Ann 1R (Statutory status disclosure) that is relevant to the firm which has communicated or approved the financial promotion.~~

...

...

3.13.4 R If a financial promotion relates to a life policy with an overseas long-term insurer but does not name the overseas long-term insurer by giving its full name or its business name:

(1) it must include the following prominent statement: "This financial promotion relates to an insurance company which does not, and is not authorised to, carry on in any part of the United Kingdom the class of insurance business to which this promotion relates. This means that the management and solvency of the company are not supervised by the Financial Services Authority. Holders of policies issued by the company will not have the right to complain to the Financial Ombudsman Service if they have a complaint against the company and will not be protected by the Financial Services Compensation Scheme if the company should become unable to meet its liabilities to them"; and

...

...

4.2.15 E Table: Content of terms of business provided to a customer: general requirements  
This table belongs to COB 4.2.11E



General requirements

...

(2) Regulator

~~The fact that the firm is regulated or authorised by the FSA. The firm's statutory status (in accordance with GEN 4 Ann 1 R (Statutory status disclosure)).~~

...

(22) Compensation

~~If applicable, an explanation of the compensation arrangements available to customers under the Compensation Scheme if the firm is unable to meet any of its liabilities, or the availability of an explanation describing those arrangements. Whether or not compensation may be available from the compensation scheme, should the firm be unable to meet its liabilities, and information about any other applicable named compensation scheme; and, for each applicable scheme, the extent and level of cover and how further information can be obtained. (See the example in COB 5.5.11 G (Investment firms: compensation information)).~~

...

...

5.5.3 R

When it conducts *designated investment business*, a *firm* must take reasonable steps to ensure that a *private customer* is given adequate information about:

- (1) the identity and business address of the *firm* and any relevant agent of the *firm*;
- (2) the identity and status, or relationship with the *firm*, of *employees* and other agents with whom the *customer* may have contact; and
- (3) ~~the fact that the firm is regulated or authorised by the FSA~~ the firm's statutory status (in accordance with GEN 4 Ann 1 R (Statutory status disclosure));

unless the *private customer* has been given the information on a previous occasion and that information is still up to date.

...

...

5.5.5 E

Table Table of information to be disclosed in written communications

This table belongs to *COB 5.5.4E*

Written communications

1. Any written communication, including stationery, business cards or other business documentation published by the *firm*, or used by its *employees*, agents, *representatives*, *financial advisers* or *introducers*, should include:

...

- (d) a statement ~~that the *firm* is regulated by or authorised by the Financial Services Authority~~ of the *firm's* statutory status (in accordance with *GEN 4 Ann 1 R* (Statutory status disclosure));

...

2. In the case of a *provider firm*, when the *firm's representative* first meets a *private customer*, the *customer* should be given the following particulars in writing, which may be in the form of a business card, either before progressing beyond the social preliminaries or as soon as reasonably practicable after a telephone conversation has ended:

...

- (c) the name of the *firm's marketing group* (if any); and
- (d) a statement ~~that the *firm* is regulated by or authorised by the Financial Services Authority~~ of the *firm's* statutory status (in accordance with *GEN 4 Ann 1 R* (Statutory status disclosure));  
and

...

5.5.5A G

*Firms* are reminded of *GEN 4.3* (Letter disclosure), which requires a disclosure in letters to *private customers*.

...

**Business conducted from an overseas place of business with overseas customers non-UK offices**

...

5.5.8

~~R (1) If, in any communication made to a *private customer* outside the *United Kingdom* in connection with *designated investment business* conducted from its (or its *appointed representative's*) office outside the *United Kingdom*, a *firm* indicates that it is an *authorised person*, it must also, where relevant, and with equal prominence, make the disclosure in *COB 5.5.7 R* (2).~~

~~(2) A *firm* need not include the disclosure in (1) if it has already made the disclosure in writing to the *private customer* to whom the communication is made.~~

G *GEN 4.4* (Business for private customers from non-UK offices), requires a *firm* to give information, similar to that in *COB 5.5.7R*,

in certain circumstances in connection with business conducted from an office outside the *United Kingdom* with both *UK* and non-*UK* private customers.

### **ISD investment firms: compensation information**

5.5.9 R An *ISD investment firm* providing or offering to provide a *core investment service* or *custody* must make available to every *client*, who has used or intends to use those services, information on whether or not compensation may be available from the *compensation scheme* should the *firm* be unable to meet its liabilities, and about any other applicable named compensation scheme; for each applicable scheme, the *firm* must describe the extent and level of cover and how further information can be obtained.

5.5.10 G The obligation in *COB 5.5.9 R* is to “make information available”. This does not require the *firm* to inform every client. A *firm* may make the information available in a number of ways, for example, by including it in explanatory literature or on the *firm’s* website.

### **Example of compensation information for a UK domestic investment firm operating from the United Kingdom**

5.5.11 G This is an example of how a *UK domestic firm*, carrying on a *regulated activity* from a *UK* establishment, could present the information required by *COB 5.5.9 R*:

#### COMPENSATION

We are covered by the Financial Services Compensation Scheme. You may be entitled to compensation from the scheme if we cannot meet our obligations. This depends on the type of business and the circumstances of the claim. Most types of investment business are covered for 100% of the first £30,000 and 90% of the next £20,000, so the maximum compensation is £48,000. Further information about compensation arrangements is available from the Financial Services Compensation Scheme.

### **ISD investment firms: language of compensation information**

5.5.12 R Information about compensation arrangements made available by an *ISD investment firm* under *COB 5.5.9 R* must:

(1) (if it relates to the activities of an establishment in the *United Kingdom*) be in English; or

(2) (if it relates to the activities of a *branch* in another *EEA State*) be in an official language of that *EEA State*.

...

...

6.5.49 R Table Third Life Directive annex II table of “information for policyholders”  
This table belongs to COB 6.5.47

Third Life Directive – “Information for policyholders”	
...	Information about the commitment ... 15. The arrangements for handling complaints concerning <i>policies</i> by policyholders, lives assured or beneficiaries under <i>policies</i> , including, where appropriate, the existence of a complaints body, <u>making clear that its existence is</u> without prejudice to the right to take legal proceedings. ...

...

....

6.8.2 G (1) *Principle 7* (Communications with clients) requires a firm to pay due regard to the information needs of its customers clients. This section reinforces *Principle 7* by requiring certain information to be provided to a customer client before a *pure protection contract* or *general insurance contract* is entered into. Certain information must also be provided on a continuing basis to a customer client with a *pure protection contract* or *life policy*. (COB 6.1 to COB 6.5 deal with pre-sale information for *life policies*.)

...

6.8.3 R A firm must ensure that, before entering into a *pure protection contract* with a customer client, it provides the customer client with the information specified in ~~COB 6.8.5R~~ 6.5.49R, unless, at the time of application, the customer client, other than an EEA ECA recipient, is habitually resident:

- (1) in an *EEA State* other than the *United Kingdom*; or
- (2) outside the *EEA* and he is not present in the *United Kingdom*.

...

6.8.5 R

R Table — Provision of information

This table belongs to COB 6.8.3R

Provision of information

~~(1) The name and legal form of the firm;~~

...

~~(15) a statement whether the *firm* or *customer* is entitled to choose the law applicable to the contract and:~~

~~(a) if so, the law which the *firm* proposes to choose;~~

~~(b) if not, the law which will apply. [Deleted]~~

6.8.6 R

*COB 6.8.7R and COB 6.8.8R apply to a long-term insurer, if the policyholder is in the United Kingdom at the time of signing the application for the pure protection contract or life policy unless, at the time of application, the client, other than an EEA ECA recipient, was habitually resident:*

(1) in an EEA State other than the United Kingdom; or

(2) outside the EEA and he was not present in the United Kingdom.

6.8.7 R

If during the term of a *pure protection contract* or *life policy* entered into on or after 1 July 1994 there is any proposed change in the information referred to in ~~COB 6.8.5 R 6.5.49R~~ items (1) to (12), the *long-term insurer* must inform the *policyholder* of the effect of the change before the change is made.

...

6.8.12 R

Before entering into a *general insurance contract* with an individual client, covering a risk situated in when the United Kingdom is the State of the risk or the individual is an EEA ECA recipient, a *firm* must, subject to COB 6.8.13 R, provide the ~~client~~ individual with:

(1) details of its complaints procedure including, where appropriate, the existence of a complaints body, making it clear that its existence is without prejudice to the policyholder's right to take legal proceedings; and

(2) a statement whether the *firm* or ~~client~~ *policyholder* is entitled to choose the law applicable to the contract and, if so, the law which the *firm* proposes to choose.

...

8.1.15 E

Table Content of a confirmation of transaction - general requirements  
This table belongs to COB 8.1.5E

Content of a confirmation of transaction – general requirements

...

2. ~~That the firm is regulated or authorised by the Financial Services Authority.~~ The firm's statutory status in accordance with GEN 4 Ann 1 R (Statutory status disclosure).

...

...

10.6.8 E

Table Content of scheme documents

This table belongs to COB 10.6.7E

Content of scheme documents

...

(1) Regulator

~~the fact that the operator is regulated or authorised by the FSA.~~ The firm's statutory status in accordance with GEN 4 Ann 1 R (Statutory status disclosure);

...

(8) Compensation

~~an explanation of the compensation arrangements available to participants under the Act if the operator is unable to meet any of its liabilities, or the availability of an explanation describing those arrangements whether or not compensation may be available from the compensation scheme should the operator be unable to meet its liabilities, and information about any other applicable compensation scheme; and, for each applicable scheme, the extent and level of cover and how further information can be obtained (see the example in COB 5.5.11 G (Example of compensation information for a UK domestic investment firm operating from the United Kingdom));~~

...

## Authorisation manual

AUTH 5 Ann 3G

**Application of the Handbook to incoming EEA firms**

...

2 Table

(1) Module of Hand- book	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
<i>GEN</i>	<i>GEN</i> applies ( <i>GEN</i> 1.1, and <i>GEN</i> 2.1, <i>GEN</i> 3.1, <i>GEN</i> 4.1 and <i>GEN</i> 5.1). However, <i>GEN</i> 4 does not apply to the extent that the <i>firm</i> is subject to equivalent <i>rules</i> imposed by its <i>Home State</i> ( <i>GEN</i> 4.1.1R(3)).	<i>GEN</i> 4 does not apply if the <i>firm</i> has <i>permission only</i> for <i>cross-border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> .  Otherwise, As column (2)
...		

## Credit unions sourcebook

### Chapter

### 11 Conduct of business and electronic commerce activities (title)

...

#### 11.1.3 G

The General provisions module of the Handbook (*GEN*) contains rules and guidance in *GEN* 4 (Statutory status disclosure) relating to disclosure of statutory status. These are summarised in *CRED* 11.3 (Statutory status disclosure).

#### 11.1.4 G

The FSA logo is a registered mark, is subject to copyright and is the property of the FSA. Credit unions are permitted to use the FSA logo in limited circumstances. Any credit union which wishes to use the FSA logo should refer to *GEN* 5 (FSA logo).

...

...

### 11.3

#### **Statutory status disclosure**

#### 11.3.1 G

This section summarises the requirements of *GEN* 4 (Statutory status disclosure) in the context of *credit unions* which do not have overseas offices.

11.3.2 G

GEN 4.3 (Letter disclosure) requires a *credit union* to take reasonable care to state that it is “authorised and regulated by the Financial Services Authority” in every letter and e-mail which it sends to a depositor or potential depositor on or after 1 March 2004..

...

CRED Appendix 2

2.1 Detailed contents of CRED

2.1.1 Table

...

11 Conduct of ~~B~~business Sourcebook (COB)

11.1 Introduction

11.2 Financial promotion

11.3 Statutory status disclosure

...

**Electronic Commerce Directive Sourcebook**

Transitional provisions

1 Table

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
...					
4.0	<u>ECO 3 Ann 1 R</u>	<u>R</u>	<u>The amendments to ECO 3 Ann 1 R made by the Statutory Status Disclosure Instrument 2003 do not apply to an outgoing or domestic ECA provider until its system for producing the required information is next updated by the outgoing or domestic ECA provider.</u>	<u>From 1 March 2003</u>	<u>1 March 2003</u>



## 1 Table

1	Information about the ECA provider and its products or services	
	(1)	An <i>outgoing</i> or <i>domestic ECA provider</i> must make the following information easily, directly and permanently available to any <i>ECA recipient</i> , in relation to any <i>electronic commerce activity</i> which it provides:
		...
	(d)	a statement <del>that</del> <u>of the provider's statutory status is authorised or regulated by the Financial Services Authority (in accordance with GEN 4 Ann 1R (Statutory status disclosure)), accompanied by a link to the FSA Register in the form <a href="http://www.fsa.gov.uk/register/">www.fsa.gov.uk/register/</a>;</u>
		...

...

## Professional Firms Sourcebook

## 5.3.1 G

The parts of the *Handbook* in which provisions are disapplied or modified in relation to *authorised professional firms* when carrying on *non-mainstream regulated activities* include those described in ~~PROF 5.3.2 G~~ PROF 5.3.1A G to PROF 5.3.7 G.

...

5.3.1A G**General provisions**

GEN 4.3.5R provides that GEN 4.3.1 (Disclosure in letters to private customers) does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*.

...

## Glossary

*employee*

- (1) (for all purposes except those in (2)) an individual:
- (a) who is employed or appointed by a *person* in connection with that *person's* business, whether under a contract of service or for services or otherwise; or
  - (b) whose services, under an arrangement between that *person* and a third party, are placed at the disposal and under the control of that *person*;
- but excluding an *appointed representative* of that *person*.

- (2) (for the purposes of:
- (a) *COB 7.13* (Personal account dealing);
  - (aa) *GEN 4* (Statutory status disclosure);
  - (b) *SUP 12* (Appointed representatives); and
  - (c) *TC*);
- an individual:
- (i) within (1); or
  - (ii) who is:
    - (A) an *appointed representative* of the *person* referred to in (1); or
    - (B) employed or appointed by an *appointed representative* of that *person*, whether under a contract of service or for services or otherwise, in connection with the business of the *appointed representative* for which that *person* has accepted responsibility.

~~state~~ State of the commitment

- ~~(in SUP 18)~~ (in accordance with paragraph 6(1) of Schedule 12 to the *Act* (Transfer schemes: certificates)) (in relation to a commitment entered into at any date):
- (a) if the *policyholder* is an individual, the State in which he had his habitual residence at that date;
  - (b) if the *policyholder* is not an individual, the State in which the establishment of the *policyholder* to which the commitment relates was established at that date;

in this definition, "commitment" means (in accordance with article 2 of the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (SI 2001/3625)) any contract of insurance of a kind referred to in article 1 of the *First Life Directive*.

~~state~~ State of the risk

- ~~(in SUP 18)~~ (in accordance with paragraph 6(3) of Schedule 12 to the *Act* (Transfer schemes: certificates)) (in relation to the *EEA State* in which a risk is situated):
- (a) if the insurance relates to a building or to a building and its contents (so far as the contents are covered by the same *policy*), the *EEA State* in which the building is situated;
  - (b) if the insurance relates to a vehicle of any type, the *EEA State* of registration;
  - (c) in the case of *policies* of a duration of four months or less covering travel or holiday risks (whatever the class concerned), the *EEA State* in which the *policyholder* took out the *policy*;
  - (d) in a case not covered by (a) to (c):
    - (i) if the *policyholder* is an individual, the *EEA State* in which he has his habitual residence at the date when the contract is entered into; and
    - (ii) otherwise, the *EEA State* in which the establishment of the *policyholder* to which the *policy* relates is situated at that date.

## ADDENDUM

### STATUTORY STATUS DISCLOSURE INSTRUMENT 2003

Annex B to this instrument is amended by the insertion of the underlined text shown below. This insertion, which amends COB 5.5.1R, is a direct consequential to amendments originally made by FSA 2003/1.

#### Amendments to the Conduct of Business sourcebook

4.2.15 R

...

...

5.5.1 R

...

(3) *COB 5.5.9R to 5.5.12R also apply to an ISD investment firm that conducts designated investment business with or for any client.*

**INTERIM PRUDENTIAL SOURCEBOOK FOR BANKS (AMENDMENT NO 2)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers); and
  - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 March 2003.

**Amendments to the Interim Prudential sourcebook for Banks**

- D. The Interim Prudential sourcebook for Banks is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Interim Prudential Sourcebook for Banks (Amendment No 2) Instrument 2003.

By order of the Board  
16 January 2003

## Annex

### Amendments to IPRU(BANK)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### Volume 1

##### Chapter BC: section 5

###### 5 APPENDIX

5.1 Clearing houses and exchanges recognised for the purpose of the Chapter BC of IPRU(BANK). (Counterparty exposures to ~~CEDEL~~ Clearstream and Euroclear continue to attract a 20% weighting).

...

#### Volume 2

##### Chapter LM: section 11

###### 11 Appendix 1 – SECURITIES SETTLEMENT

...

###### 11.2 Domestic settlement systems

Country	Instrument	Settlement
...		
Japan	Treasury bills	T+3
	Government bonds	T+3
	Equities	T+3
Luxembourg	Most securities settled through <del>Cedel</del> <u>Clearstream</u>	See below
	When physical delivery required	T+3
Netherlands	Money market instruments	T+2
	Other securities (including government bonds)	T+3
...		

### 11.3 International settlement systems

- 5 Euroclear and ~~Cedel~~ Clearstream are the two major depositories and settlement organisations in international securities markets. They ~~were set up primarily to deal with Eurobonds, foreign bonds (securities issued in domestic capital markets by non-resident borrowers), and euro-notes. However, both organisations now~~ and accept and settle transactions involving domestic securities including equities.
- 6 Members hold cash deposits with Euroclear/~~Cedel~~ Clearstream which allows them to provide settlement facilities:
- (a) In ~~Cedel~~ Clearstream, funds can be received on the same day if instructions are issued by 11am, and otherwise settlement is on T+1.
  - (b) In Euroclear, settlement on T is provided. However, standard settlement is T+3.

### 11.4 Brady bonds/LDC debt

- 7 Brady bonds are almost always settled through Euroclear/~~Cedel~~ Clearstream.
- 8 LDC bank debt which has not been swapped for Brady bonds (or otherwise converted into a security) typically takes three weeks to settle once a price is agreed.
- ...

## Chapter LS: section 4

...

### 4.4 Definitions relevant to both components

#### 4.4.1 *The stock of sterling liquid assets*

- 9 ...
- (c) UK Treasury bills (including those denominated in Euro) and Bank of England Euro bills and notes;
  - ...
  - (e) sterling international bonds issued by EEA government or certain international financial institutions, where they have been issued into Euroclear or /~~Cedel~~ Clearstream settlement systems;
  - (f) Euro-denominated bonds issued by EEA governments or certain international financial institutions, where they have been issued into

Euroclear or ~~Cedel~~ Clearstream settlement systems and where they are eligible for use in ESCB monetary policy operations;

...

- 12 Where a bank has *pledged out or charged* assets ~~otherwise qualifying which fail to be included as to be part of its~~ the stock, it may continue to include them as part of its stock provided it retains the title to them. Conversely it should not include ~~exclude~~ assets otherwise qualifying ~~falling to be included as part of its~~ the stock, which have been acquired as *pledged or charged assets*, unless it receives the title to them.

...

**INTERIM PRUDENTIAL SOURCEBOOK FOR BUILDING SOCIETIES  
(AMENDMENT NO 4) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers); and
  - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 March 2003.

**Amendments to the Interim Prudential sourcebook for Building Societies**

- D. The Interim Prudential sourcebook for Building Societies is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Interim Prudential Sourcebook for Building Societies (Amendment No 4) Instrument 2003.

By order of the Board  
16 January 2003



## Annex

### Amendments to IPRU(BSOC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1 Solvency

##### Annex 1B

##### RISK ASSET WEIGHTS

...

##### 1B.9.9 Stock Lending

...

**1B.9.2** However, stock lending which is not fully collateralised, such as that conducted through the ~~Cedel~~ Clearstream and Euroclear stock lending programmes, needs to take account of the counterparty risk. As ~~Cedel~~ Clearstream and Euroclear are both Zone A banks, an additional capital weighting of 20% should be applied.

**INTERIM PRUDENTIAL SOURCEBOOK FOR INVESTMENT BUSINESSES  
(AMENDMENT NO 3) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers); and
  - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 March 2003.

**Amendments to the Interim Prudential sourcebook for Investment businesses**

- D. The Interim Prudential sourcebook for Investment businesses is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Interim Prudential Sourcebook for Investment Businesses (Amendment No 3) Instrument 2003.

By order of the Board  
16 January 2003

## Annex

### Amendments to IPRU(INV)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 3 Chapter 3: Financial resources for Securities and Futures Firms which are not Investment Firms

...

3-176 R All *repurchase, reverse repurchase, securities or physical commodities* (10)lending or borrowing *sale and buy back* and *buy and sale back agreements* with a stock exchange, *clearing house*, ~~Cedel~~ Clearstream or Euroclear are exempt from this rule.

...

#### Appendix 37 (rule 3-177)

#### GUIDANCE NOTES FOR MONEY BROKERS

...

Approved payments systems

3 The following are approved payment systems when the systems concerned provide for settlement on a delivery versus payment basis -

...

BOJ-NET DVP

~~Cedel~~

Central Gilts Office

Clearstream

Depository Trust Company

Euroclear

...

10 Chapter 10: Financial resources for Securities and Futures Firms which are Investment Firms

...

Appendix 1 - Glossary of Terms for IPRU(INV) 10

...

*relevant collateral*

In relation to a transaction:

...

(e) the performance guarantees issued in support of the securities lending and borrowing programmes of Euroclear and ~~Cedel~~ Clearstream, in respect only of *exposure* arising from participation in such programmes,

...

Chapter 13: Financial Resource Requirements for Personal Investment Firms

...

Appendix 13 (1)

Defined Terms for Chapter 13

...

*adequate collateral*

means any of the following items of collateral provided to a *firm* by a counterparty:

...

(h) the performance guarantees issued in support of the securities lending and borrowing programmes of Euroclear and ~~Cedel~~ Clearstream, in respect only of exposure arising from participation in such programmes,

...

**CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT NO 10)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the powers listed in Schedule 4 to the Conduct of Business sourcebook.
- B. The rule-making powers listed in that Schedule are specified for the purpose of section 153(2) of the Financial Services and Markets Act 2000 (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 March 2003.

**Amendments to the Conduct of Business sourcebook**

- D. The Conduct of Business sourcebook is amended in accordance with Annex A to this instrument.

**Amendments to the Glossary**

- E. The Glossary is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Conduct of Business Sourcebook (Amendment No 10) Instrument 2003.

By order of the Board  
16 January 2003

## Annex A

### Amendments to the Conduct of Business sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 3.10.1 R (1) An *unsolicited real time financial promotion* is a *real time financial promotion* which is not a solicited as described in (2) real time financial promotion.

...

...

- 3.11.1 G (1) Under section 238~~(1)~~ of the *Act* (Restrictions on promotion), an *authorised person* must not *communicate* an invitation or inducement to participate in an *unregulated collective investment scheme* ("the scheme promotion restriction"). This applies in the case of a *communication* originating outside the *United Kingdom* only if the *communication* is capable of having an effect in the *United Kingdom*.

...

...

- 3.11.3 G (1) A *firm* may *communicate* an invitation or inducement to participate in an *unregulated collective investment scheme*, which originates in the *United Kingdom* or is capable of having an effect in the *United Kingdom*, only if either:

...

- 3.11.4 R ~~This chapter applies only in relation to invitations or inducements that may be *communicated* by a *firm* without contravening section 238(1) of the *Act*. In relation to the *communication* by a *firm* of an invitation or inducement to participate in an *unregulated collective investment scheme*, this chapter applies only if:~~

- (1) the *communication* is permitted by COB 3.11.2R;
- (2) in the case of a *communication* originating outside the *United Kingdom*, the *communication* is capable of having an effect in the *United Kingdom*; and
- (3) the *communication* is not exempted by the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001.

- 3.11.5 G The purpose of COB 3.11.4R is to give effect to the limitation of

the *FSA's* rule-making power in section 145(3)(b) of the *Act* (Financial promotion rules). It also ensures that this chapter does not apply to an invitation or inducement communicated by a firm under an exemption from the scheme promotion restriction in the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001.

...

COB 3: Financial promotion

Annex 5 (R)

...

2 Table Permitted promotion of unregulated collective investment schemes

Promotion to:	Promotion of an unregulated collective investment scheme which is:
<p>...</p> <p>Category 4 <i>person</i>:</p> <p>...</p>	<p>...</p>
	<p>2. Any <i>collective investment scheme</i> provided that the participation of eligible employees is to facilitate their co-investment:</p> <p>(i) with one or more <i>companies</i> in the same <i>group</i> as their employer (which may include the employer) and/or</p> <p>(ii) with one or more <i>clients</i> of such a <i>company</i>.</p>

Promotion to:	Promotion of an unregulated collective investment scheme which is:
...	<del>irrespective of whether the eligible employees co-invest through a company or a collective investment scheme falling within A(2)(ii) above or a trust under which they or a member of their immediate family is a potential beneficiary.</del>

...

7.1.10 R In addition to *COB 7.1.3 R*, a *broker fund adviser*, acting for a *private customer*, must obtain an acknowledgement from the *private customer* stating that he understands the nature of the *firm's* dual role as adviser to the *private customer* and adviser to the *long-term insurer, overseas long-term insurer* or operator of the *broker fund fund* in question.

...



- 7.1.12 R (1) A broker fund adviser must ensure that it does not effect, personally recommend or arrange (bring about) the issue to a customer of a life policy by a relevant insurance undertaking, under which contributions will be made to the adviser's broker fund, unless the relevant insurance undertaking is contractually responsible to that customer in writing for the acts and omissions of the broker fund adviser or its associate in its role as an adviser to that fund as if they were the acts or omissions of the relevant insurance undertaking and will remain responsible until the earlier of:
- (a) the broker fund adviser or its associate ceasing to be the adviser to the fund; and
- (b) the termination of the policy.
- (2) In (1), a relevant insurance undertaking is an insurance undertaking which does not have permission to effect or carry on long-term insurance business but which is authorised to carry on long-term insurance business in the Bailiwick of Guernsey, the Isle of Man, the Commonwealth of Pennsylvania, the State of Iowa or the Bailiwick of Jersey.
- (3) In (1), associate has the extended meaning given to it in the definition of broker fund adviser.
- (4) A firm must comply with the requirements in (1) where it effects, personally recommends or arranges (brings about) switching in relation to a broker fund for the customer.

Product providers with broker funds

7.1.13 R A product provider with a broker fund must not enter into a transaction with a customer in respect of a broker fund, unless there is a written agreement in force between it, the broker fund adviser and any other person having responsibility for the management of the broker fund to which the agreement relates, clearly establishing the responsibilities of each party to the agreement, the investment objectives of the broker fund and the policies and strategies that are to be followed to achieve those objectives.

...

7.13.4 R A firm must take reasonable steps to ensure that:

...

- (2) ~~when it gives permission to~~ permits an any of its employees to

undertake a *personal account transaction in a designated investment in relation to which the firm conducts designated investment business, or in any related investment*, it receives prompt notification of, or is otherwise able to identify, the transaction.

...

7.13.7 E (1) For the purposes of COB 7.13.4R, a *firm's* "reasonable steps" should ensure that:

...

(c) procedures are established and maintained by the *firm* that are appropriate to its business, and that are designed with a view to ensuring that:

(i) each of its *employees* does not undertake a *personal account transaction in a designated investment in relation to which the firm conducts designated investment business, or in any related investment*, unless the *firm* has given its permission in writing to that transaction, or to transactions generally in *designated investments* of that kind;

...

...

9.1.5 G In accordance with article 42 of the *Regulated Activities Order*, a *firm* ("I") will not be *arranging safeguarding and administration of assets* if it introduces a *client* to another firm whose *permitted activities* include the *safeguarding and administration of investments*, or to an *exempt person* acting as such, with a view to that other firm or exempt person:

(1) providing a safe custody service in the *United Kingdom*; or

(2) arranging for the provision of a safe custody service in the *United Kingdom* by another *person*;

and the other *firm, exempt person* or other *person* who is to provide the safe custody service is not in the same *group* as, ~~or remunerated by, the introducing firm I,~~ and does not remunerate I.

## Annex B

### Amendments to the Glossary

Amend the following definitions as shown (underlining indicates new text and striking through indicates deleted text).

*broker fund* (in relation to a fund for which the *firm* is of will be a *broker fund adviser*):

(a) an actual or notional fund of a *long-term insurer* ~~;~~ or overseas long-term insurer, which contains or will contain contributions made or to be made by a *client* or *clients* of a *firm* in connection with a *life policy* or *policies*;

*broker fund adviser* ~~a person~~ an independent intermediary who has, or whose *associate* being an *authorised person* has, an arrangement with a *long-term insurer*, overseas long-term insurer or ~~with the operator of a regulated collective investment scheme or an unregulated collective scheme~~, under which it is to be expected that the *long-term insurer*, overseas long-term insurer or *operator* will take into account the advice of that ~~person~~ independent intermediary or his *associate*:

- (a) in the case of a *long-term insurer* or overseas long-term insurer, on any matter likely to influence the performance of any of the *long-term insurer's* or overseas long-term insurer's funds or any *investment* issued by the *long-term insurer* or overseas long-term insurer into which cash contributions of that ~~person's~~ independent intermediary's *customers* have been made;
- (b) in the case of an *operator*, on the composition of the property of the *collective investment scheme* into which cash contributions of that ~~person's~~ independent intermediary's *customers* have been made;

in this definition, *associate* includes any *authorised person* in respect of whose services the first ~~person~~ independent intermediary receives any benefit or reward, either directly or indirectly, in connection with advice of the kind described in (a) and (b) given to a *long-term insurer* or overseas long-term insurer or to a *collective investment scheme operator*.



**MARKET CONDUCT SOURCEBOOK  
(AMENDMENT TO LIST OF PRESCRIBED MARKETS NO 2)  
INSTRUMENT 2003**

**Powers Exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

**Commencement**

- B. This instrument comes into force on 1 February 2003.

**Amendments to the Market Conduct sourcebook**

- C. MAR 1 (The Code of Market Conduct) is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as Market Conduct Sourcebook (Amendment to List of Prescribed Markets No 2) Instrument 2003.

By order of the Board  
16 January 2003

## Annex

### Amendments to MAR 1 (The Code of Market Conduct)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.11.2G Section 118(3) allows the Treasury to prescribe markets and *qualifying investments*. This is the purpose of the Financial Services and Markets Act 2000 (Prescribed markets and Qualifying investments) Order 2001. This Order, when read in conjunction with the *Act*, makes certain kinds of *investment* “traded on” *prescribed markets qualifying investments*. The Treasury has prescribed all markets established under the rules of a *UK RIE* and the market known as OFEX as markets to which section 118 applies. The *prescribed markets*, as at ~~18 July 2002~~ 16 January 2003, are:

(1) the markets established under the rules of the following (the *UK RIEs*):

- ~~(a) — Coredeal IMTS;~~
- (a)(b) The International Petroleum Exchange of London Limited;
- (b)(c) LIFFE Administration and Management;
- (c)(d) The London Metal Exchange Limited;
- (d)(e) London Stock Exchange plc (including AIM);
- (e)(f) OM London Exchange Limited;
- (f)(g) virt-x Exchange Limited;

(2) the market known as OFEX.

**APPLICATION FEES (2002/2003)(NO 3) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 156 (General supplementary powers);
  - (2) section 157(1) (Guidance); and
  - (3) paragraph 17(1) of Schedule 1 (Fees).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 March 2003.

**Amendments to the Authorisation manual**

- D. The Authorisation manual is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Application Fees (2002/2003)(No3) Instrument 2003.

By order of the Board  
16 January 2003

## Annex

### Amendments to the Authorisation manual

In this Annex, underlining indicates new text and striking through indicates deleted text.

4.2.5G ~~An application for a *Part IV permission* will not be complete until the appropriate fee is paid, and the six month period for consideration will not start until that time (see further *AUTH 3.9.30G*). The appropriate authorisation fee is an integral part of an application for *Part IV permission*. Any application pack received by the *FSA* without the accompanying appropriate authorisation fee, in full and without deduction (see *AUTH 4.2.4R*), will not be treated as an application made, incomplete or otherwise, in accordance with section 51(3)(a) of the *Act*. Where this is the case, the *FSA* will contact the applicant to point out that the application cannot be progressed until the appropriate fee has been received. In the event that the appropriate authorisation fee, in full and without deduction, is not forthcoming, the application pack will be returned to the applicant and no application will have been made.~~



**SUPERVISION MANUAL (AMENDMENT NO 11 AND CONSEQUENTIAL AMENDMENTS TO THE HANDBOOK) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (the "Act"):
    - (a) section 138 (General rule-making powers);
    - (b) section 148(3) (Modification or waiver of rules);
    - (c) section 156 (General supplementary powers);
    - (d) section 157(1) (Guidance);
    - (e) section 250(4) and (5) (Modification or waiver of rules);
    - (f) section 294(2) (Modification or waiver of rules); and
  - (2) regulation 7(3) and (4) of the Open-Ended Investment Companies Regulations 2001 (Modification or waiver of rules).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 March 2003.

**Amendments to the Supervision manual**

- D. The Supervision manual is amended:
- (1) by inserting, as SUP 8 Annex 2D, the provisions in Annex A to this instrument; and
  - (2) in accordance with Annex B to this instrument.

**Amendments to the Credit unions sourcebook**

- E. The Credit unions sourcebook is amended in accordance with Annex C to this instrument.

**Citation**

- F. This instrument may be cited as the Supervision Manual (Amendment No 11 and Consequential Amendments to the Handbook) Instrument 2003.

By order of the Board  
16 January 2003

## **Annex A**

### **Amendments to the Supervision manual**

After SUP 8 Ann 1G, insert the following new annex:



**SUP 8 Ann 2D** (see SUP 8.3.3D)

**Application form for a waiver or modification<sup>1</sup>**

Before completing this application form, you may find it helpful to discuss the application with your usual supervisory contact, or usual contact in Corporate Authorisation, at the *FSA*. However, you must still ensure that all relevant information is included in this application form.

Firm details		
<b>1</b>	Name of <i>firm</i> . <sup>2</sup>	
<b>2</b>	FSA firm reference no.	
<b>3</b>	Contact point at <i>firm</i> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">                     Name:                      Position:                      Address:                       Telephone number:                      Fax number:                      E-mail address:                 </div> <div style="width: 35%;"></div> </div>	
Details of <i>waiver</i> sought		
<b>4</b>	Are you applying for a variation of an existing <i>waiver</i> ? If so, give the direction reference number. <sup>3</sup>	
<b>5</b>	<i>Rule(s)</i> to which this application relates.	
<b>6</b>	Are you applying for the <i>rule</i> to be waived completely, or for a modification of the <i>rule</i> ? If a modification, provide a draft of the modification sought.	
<b>7</b>	Detail any special requirements. <sup>4</sup>	
Details of research undertaken		
<b>8</b>	Confirm that you have checked the <i>waivers</i> published by the <i>FSA</i> for any precedent. If your application is based on a precedent, give the Direction reference number. <sup>5</sup>	I confirm there is/is not a published precedent  Published precedent Direction reference number (if applicable):
<b>9</b>	Is your application under section 148, 250 or 294 of the <i>Act</i> , or under regulation 7 of the <i>OEIC Regulations</i> ? <sup>6</sup>	
<b>10</b>	Confirm that the <i>rule(s)</i> can be waived. <sup>7</sup>	Confirmed/not relevant
<b>11</b>	Set out any matters that you believe would be relevant to assessing whether the <i>waiver</i> would be compatible with European directives. <sup>8</sup>	
Reasons why the <i>waiver</i> should be given		
<b>12</b>	Give a full and clear explanation of why you want the <i>waiver</i> .	



13	Give a full and clear explanation of why you consider that the statutory tests are satisfied. <sup>9</sup>	Your compliance with the <i>rules</i> , or the <i>rules</i> as unmodified, would: <ul style="list-style-type: none"><li>• be unduly burdensome because:</li></ul>
		OR <ul style="list-style-type: none"><li>• not achieve the purpose for which the <i>rules</i> were made because:</li></ul>
		AND The <i>waiver</i> would not result in undue risk to <i>persons</i> whose interests the <i>rules</i> are intended to protect because:
<b>Publication</b>		
14	Are you content for the <i>waiver</i> to be published? If no, state your reasons. <sup>10</sup>	

**Warning:** Knowingly or recklessly giving the *FSA* information, which is false or misleading in a material particular, may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). *SUP* 15.6.1R and *SUP* 15.6.4R require an *authorised person* to take reasonable steps to ensure the accuracy and completeness of information given to the *FSA* and to notify the *FSA* immediately if materially inaccurate information has been provided. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the *FSA*. It should not be assumed that information is known to the *FSA* merely because it is in the public domain or has previously been disclosed to another regulatory body. If there is any doubt about the relevance of information, it should be included.

**Declaration and signature<sup>11</sup>**

I confirm that the information in this form is accurate and complete to the best of my knowledge and belief.

Signature of authorised signatory:  
Name:  
Position held:

Date:

**Declaration and signature if a third party is named<sup>12</sup>**

If the *waiver* will name a third party (for example, a modification disapplying for a named individual the *rule* in *TC* requiring an examination to be passed), the third party must sign below.

I confirm that the information in this form that concerns my circumstances is accurate and complete to the best of my knowledge and belief. I also confirm that I am content for the *waiver* to be published, unless otherwise indicated in box 14 of this form.

Signature of named third party:  
Name:

Date:



### Instructions for submission

When completed, submit this application form in line with *SUP 15.7.4R* to *SUP 15.7.9G*. In particular, you may send applications by e-mail (which the *FSA* prefers) or by post, addressed to your usual supervisory contact or usual contact in Corporate Authorisation. The address for postal submission is:

- (1) The Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS  
(If your usual supervisory contact or usual contact in Corporate Authorisation at the *FSA* is based in London)
- (2) The Financial Services Authority  
Sutherland House  
108-114 Dundas Street  
Edinburgh EH3 5DQ  
(If your usual supervisory contact at the *FSA* is based in Edinburgh)

1. Defined terms used in the text are shown in italics. Definitions can be found in the Handbook Glossary on the *FSA*'s website (<http://www.fsa.gov.uk>).
2. If the applicant is not a *firm*, for example an applicant for a *Part IV permission*, give its name and indicate that it is not an *authorised person*. There is no need to give the *FSA* firm reference number in the next question. If the application is submitted by more than one *firm* (for example more than one *firm* in a *group*), the names of each *firm* must be given. All *FSA* firm reference numbers should be given in the next question and, if the form is signed, a single individual can sign the form on behalf of each *firm* if he has authority to do so.
3. Obtain the Direction reference number from the Direction sent to you by the *FSA*.
4. For example, do you need an urgent decision, or is there a specific period for which the *waiver* is required?
5. You can inspect published *waivers* at [http://www.fsa.gov.uk/waivers/published\\_waivers.html](http://www.fsa.gov.uk/waivers/published_waivers.html).
6. Section 148 of the *Act* is the power used to give most *waivers*. Section 250 of the *Act* and regulation 7 of the *OEIC Regulations* are relevant only for certain *rules* in the Collective Investment Schemes sourcebook (see *SUP 8.2.3G*). Section 294 of the *Act* is relevant only for certain *rules* in the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (see *REC 3.3*).
7. Schedule 6 to each sourcebook and manual of the *Handbook* sets out those *rules* that the *FSA* has the power to *waive* under the *Act*. It does not, however, deal with compatibility with European directives (see next footnote). The exception to this is for *IPRU*, which has no schedule 6. If you are applying for a *waiver* of an *IPRU rule* answer 'not relevant' to this question.
8. The *FSA* cannot give a *waiver* that would be incompatible with the *United Kingdom's* responsibilities under European directives. In many cases, the 'Purpose' section of a chapter or section of the *Handbook* will identify whether the text implements a directive requirement. The *FSA* only expects a *firm* to take reasonable steps in answering this question; what is reasonable will depend on the resources of the *firm*.
9. The *FSA* cannot give a *waiver* unless the statutory tests are satisfied. The tests are set out in section 148(4) of the *Act*, and reproduced in *SUP 8.3.1G*. The tests under sections 250 and 294 of the *Act*, and regulation 7 of the *OEIC Regulations*, are similar. *Firms* need to be aware that both matters ('unduly burdensome' or 'not achieve the purpose'; and 'undue risk') noted require detailed explanation and substantive argument before the application can be processed. Unless there are satisfactory responses to these matters then the *waiver* application may be rejected, or we may require further information.
10. See *SUP 8.6.7G* (Firm's objection to publication).
11. A signature on behalf of the *firm* is not mandatory.
12. In cases where a third party is named, the third party's signature is mandatory. The *FSA* suggests that *firms* submit the form by e-mail and then forward a hard copy signed by the third party.

## Annex B

### Amendments to the Supervision manual

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 4.1.3R

Table                      Applicable sections (see SUP 4.1.1R)

(1)	Category of firm	(2)	Applicable sections
(1)	<p>A <del>long term</del> <u>long term insurer</u>, other than:</p> <p style="padding-left: 40px;">(a) a <i>registered friendly society</i> which is a <i>non-directive friendly society</i>; <del>and</del></p> <p style="padding-left: 40px;">(b) an <i>incorporated friendly society</i> that is a <i>flat rate benefits business friendly society</i>; <del>and</del></p> <p style="padding-left: 40px;"><u>(c) an incoming EEA firm.</u></p>		SUP 4.1, SUP 4.2, SUP 4.3 and SUP 4.5
(2)	A <i>friendly society</i> , other than a <i>friendly society</i> within (1).		SUP 4.1, SUP 4.2, SUP 4.4 and SUP 4.5

...

8.1.1AG                      This chapter is relevant to an applicant for a *Part IV permission*, as if that applicant were a *firm*. Where the chapter refers to usual supervisory contact, the applicant should read this as being the usual contact in Corporate Authorisation.

...

8.3.3D                      If a *firm* wishes to apply for a *waiver*, it must ~~apply in writing~~ complete and submit the form in SUP 8 Ann 2D (Application form for a waiver or modification). The application must be given or addressed, and delivered, in the way set out in SUP 15.7.4R to SUP 15.7.9G (Method of notification). ~~The application must include:~~

- (1) ~~the name and FSA firm reference number of the *firm* making the application, and a contact point for the *firm* on the application;~~
- (2) ~~the reference number of the *rule* to which the application relates;~~
- (3) ~~a clear explanation of the *waiver* that is being applied for and the reasons why the *firm* wants it;~~

- ~~(4) details of any special requirements, for example if the *firm* needs a decision urgently, or if there is a specific period for which the *waiver* is required;~~
- ~~(5) relevant facts that support the *firm's* application;~~
- ~~(6) the *firm's* reasons for considering that the conditions in section 148(4) of the Act are satisfied (see SUP 8.3.1G); and~~
- ~~(7) confirmation that the *firm* is content for the waiver to be published or, if not, the reasons, with reference to SUP 8.6.2G, why the firm believes that:
 
  - ~~(a) it would be inappropriate or unnecessary to publish the *waiver*; or~~
  - ~~(b) the *waiver* should be published without disclosing the identity of the firm (giving details of any possible prejudice to commercial interests).~~~~

- 8.3.3AG (1) The *FSA's* preferred method of submission for *waiver* applications is by e-mail.
- (2) The form is available on the *FSA's* website (see [http://www.fsa.gov.uk/waivers/application\\_form](http://www.fsa.gov.uk/waivers/application_form)).

...

8.3.5AG The *FSA* will treat a *firm's* application for a *waiver* as withdrawn if it does not hear from the *firm* within 20 *business days* of sending a communication which requests or requires a response from the *firm*. The *FSA* will not do this if the *firm* has made it clear to the *FSA* in some other way that it intends to pursue the application.

...

16.1.3R

Table Application of different sections of SUP 16

(1) Section(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
...		



Note = ~~Section 16.7 applies to~~ Where an *authorised professional firm* which is required by *IPRU(INV)* 2.1.2R(1) to comply with chapter 3, 5, 10 or 13 of *IPRU(INV)*, ~~Section 16.7 applies to such a firm as if it were the relevant firm category in the right hand column of *IPRU(INV)* 2.1R).~~

...

Exceptions: friendly societies and building societies

16.4.10R ...

...

Exception: insurers

16.4.12R An insurer need not submit a report under SUP 16.4.5R to the extent that the information has already been provided to the FSA under IPRU(INS) 9.30R (Additional information on controllers).

...

17.7.8R The reporting systems referred to in SUP 17.7.1R are:

(1) CEDCOM system operated by ~~CEDEL SA, Luxembourg~~ Clearstream Banking AG, Frankfurt;

...

...

17 Ann 2R: Mandatory fields for reporting systems

3 Table The investment identification codes referred to in (1) above are:

CC	<del>CEDEL</del> <u>Clearstream</u> and Euroclear Common Codes	9 Numeric
...		

...

17 Ann 3R: Manual transaction reporting form

1 Table Notes for completion of manual transaction reporting form

...
<p>Security Code Type (O)</p> <p>The valid Security Type Codes are as follows:</p> <p>CC - <del>CEDEL</del> <u>Clearstream</u> and Euroclear Common Codes;</p> <p>...</p>
...

...

Schedule 2

Notification requirements

2 Table

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
SUP 8.3.3D	<del>Waiver</del> <u>Application for a waiver</u>	<del>Name and FSA reference number, reference number of the rule to which the application relates, clear explanation of the waiver and the reasons why the firm wants it, details of any special requirements, relevant facts to support the application, the firm's reasons for considering the waiver criteria are met and confirmation that the firm is content for the waiver to be published or the reasons why the firm believes the waiver should not be published</del>  <u>The form in SUP 8 Ann 2D (Application form for a waiver or modification)</u>	<del>Firm seeks a waiver</del>	Before the <i>waiver</i> is required; the <i>FSA</i> will aim to give a <i>waiver</i> decision within 20 <i>business days</i> of receiving the application.

...				
<i>SUP 17</i>	Transaction reporting ...	The fact of intending to use one of the systems specified	Before using one of the reporting systems listed in SUP 17.7.8R:  (1) CEDCO M system operated by <del>CEDEL</del> SA, Luxembourg <del>urg</del> <u>Clearstream Banking AG, Frankfurt</u> ; ...	Before using the system specified
...				



## Annex C

### Amendments to the Credit unions sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 14.7.6G *SUP* 8.3.3D states that if a *credit union* wishes to apply for a *waiver*, it must do so ~~in writing~~ to its usual supervisory contact at the *FSA* using the form in *SUP* 8 Ann 2D (Application for a waiver or modification). ~~The application must include:-~~
- ~~(1) the name and FSA reference number of the *credit union* making the application, and a contact point for the *credit union* on the application;-~~
  - ~~(2) the reference number of the *rule* to which the application relates;-~~
  - ~~(3) a clear explanation of the *waiver* that is being applied for and the reasons why the *credit union* wants it;-~~
  - ~~(4) details of any special requirements, for example if the *credit union* needs a decision urgently, or if there is a specific period for which the *waiver* is required;-~~
  - ~~(5) relevant facts that support the *credit union's* application;-~~
  - ~~(6) the *credit union's* reasons for considering that the conditions in *CRED* 14.7.5G are satisfied;-~~
  - ~~(7) any reasons, with reference to *CRED* 14.7.13G, why the *credit union* believes that it would be inappropriate or unnecessary to publish the *waiver*;-~~

**ENFORCEMENT MANUAL (PROHIBITION ORDERS AND PAYMENT OF PENALTIES BY INSTALMENTS) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers in the Financial Services and Markets Act 2000:
- (1) section 124 (Statement of policy);
  - (2) section 157(1) (Guidance); and
  - (3) section 210 (Statements of policy).

**Commencement**

- B. This instrument comes into force on 1 February 2003.

**Amendments to the Enforcement manual**

- C. The Enforcement manual is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Enforcement Manual (Prohibition Orders and Payment of Penalties by Instalments) Instrument 2003.

By order of the Board  
16 January 2003

## Annex

### Amendments to the Enforcement manual

In this Annex, underlining indicates new text, and striking through indicates deleted text.

8.1.2G The power to prohibit individuals who are not fit and proper from carrying out functions in relation to *regulated activities* helps the FSA to work towards its *regulatory objectives* of protecting *consumers*, promoting public awareness, maintaining market confidence in the *financial system* and reducing *financial crime*. The FSA may exercise its power to make a *prohibition order* where it considers ~~an individual presents such a risk to consumers or to confidence in the market~~ generally that, to achieve any of those objectives, it is necessary either to prevent ~~him~~ an individual from carrying out any function in relation to *regulated activities* or from being employed by any *firm*, or to restrict the functions which he may carry out or the type of *firm* by which he may be employed.

...

8.4.3G The FSA recognises that its decision to make a *prohibition order* will have a substantial impact on the individuals concerned and, where relevant, their employers. When it decides whether to make a *prohibition order*, the FSA will consider all relevant circumstances including whether other enforcement action should be taken or has already been taken against the individual by the FSA. The FSA will also consider whether enforcement action has been taken against the individual by other enforcement agencies or *designated professional bodies*. Depending on the circumstances of the case, it may be appropriate to prohibit the individual from performing only certain functions in relation to *regulated activities* carried on by certain *firms*. Alternatively, the FSA may consider it necessary to prevent the individual concerned from performing any functions in relation to any

regulated activities carried on by any firm.-

ENF 8.4.4G ~~The FSA considers that a *prohibition order* is a more serious penalty than the withdrawal of approval because a *prohibition order* will usually be much wider in scope. In most cases the FSA will consider whether the particular unfitness can be adequately dealt with by withdrawing approval or other disciplinary sanctions, for example, public censure or financial penalties, or by issuing a private warning. The FSA will consider making a *prohibition order* only in the most serious cases of lack of fitness and propriety. In those cases the FSA may consider it necessary to prevent the individual concerned from performing any functions in relation to any *regulated activities* carried on by any *firm*. Where the individual concerned is not an *approved person* the FSA will not have the option of withdrawing approval or exercising its disciplinary powers in relation to the individual concerned and therefore a *prohibition order* may be the only appropriate action available.~~

...

8.5.1G When the FSA has concerns about the fitness and propriety of an *approved person*, it may consider whether it should seek to withdraw his approval, prohibit him from conducting *regulated activities*, or both. ENF 7 (Withdrawal of approval) sets out the FSA's approach to the use of its power to withdraw approval in relation to individuals who are *approved persons*. The grounds on which the FSA may withdraw approval are similar to the grounds on which the FSA may consider exercising its power to make a *prohibition order* against individuals who are *approved persons*. ~~The FSA considers that the prohibition of an individual who is an *approved person* may have more serious consequences than the withdrawal of approval for a particular *controlled function*. A *prohibition order* will be wider in scope than the withdrawal of approval (see ENF 8.3.2G). Accordingly, a *prohibition order* will be used only where the *approved person* is an individual and presents a degree of risk to *consumers* or to confidence~~



~~in the *financial system* that cannot be sufficiently addressed by the withdrawal of his approval or other disciplinary sanction.~~

8.5.1AG The *FSA* will consider in each case whether its *regulatory objectives of maintaining market confidence in the financial system, promoting public awareness, protecting consumers and reducing financial crime can adequately be achieved by withdrawing approval or disciplinary sanctions, for example, public censure or financial penalties, or by issuing a private warning. The FSA considers that a prohibition order generally has more serious consequences than the withdrawal of approval because a prohibition order will usually be wider in scope (see ENF 8.3.2G). It is therefore likely that the FSA will consider making a prohibition order against approved persons only in the more serious cases of lack of fitness and propriety where it considers that the other powers available to it are not sufficient to achieve the FSA's regulatory objectives.*

...

**8.6 Prohibition orders against individuals employed or formerly employed by firms but who are not approved persons**

8.6.1G Where the *FSA* considers making a *prohibition order* against an individual employed or formerly employed by a *firm* who is not an *approved person*, it may make an order only on the grounds that the individual is not fit and proper to carry out functions in relation to *regulated activities* carried on by an *authorised person*.

8.6.1AG Where the individual concerned is not an *approved person*, the *FSA* will not have the option of withdrawing approval of exercising its disciplinary powers in relation to the individual concerned and therefore a *prohibition order* may be the only appropriate action available. In these cases, the *FSA* will consider the severity of the risk

posed by the individual. It may prohibit the individual where it considers it necessary to achieve the FSA's regulatory objectives of maintaining market confidence in the financial system, promoting public awareness, protecting consumers and preventing financial crime.

8.6.2G When considering whether to exercise its power to make a *prohibition order* against an individual employed or formerly employed by a *firm* who is not an *approved person*, the FSA will consider those factors set out in ENF 8.5.2G (1), ENF 8.5.2G (3), ENF 8.5.2G (5) and, if relevant, ENF 8.5.2G (6).

...

8.7.1AG In cases where it is considering whether to exercise its power to make a *prohibition order* against an individual carrying on *exempt regulated activities* by virtue of an exemption from the *general prohibition* under Part XX of the *Act*, the FSA will consider whether the particular misconduct might be more appropriately dealt with by making an order disapplying the exemption using its power under section 329 of the Act. In most cases where the FSA is concerned about the fitness and propriety of a specific individual engaged in *exempt regulated activities* by virtue of an exemption under Part XX, it will be more appropriate to consider whether to make an order prohibiting the individual from performing functions in relation to exempt regulated activities than to make a disapplication order (see ENF 18.4.3G).

...

8.8.1G The guidance in ENF 8.8 applies to individuals, other than individuals referred to in ENF 8.5 to ENF 8.7. The FSA will consider exercising its power to make a *prohibition order* against such individuals ~~who are not approved persons nor employed by firms~~ where they have shown themselves to be unfit to carry out functions in relation to *regulated activities*.

...

8.8.2AG In cases where it is considering whether to exercise its power to make a prohibition order against individuals not referred to in ENF 8.5 to ENF 8.7, the FSA will not have the option of considering whether other enforcement action may adequately deal with the misconduct in question. In these cases, the FSA will consider the severity of the risk posed by the individual. It may prohibit the individual where it considers this is necessary to achieve the FSA's regulatory objectives of maintaining confidence in the financial system, promoting public awareness, protecting consumers and reducing financial crime.

8.8.3G When determining the fitness and propriety of an individual, who is not an individual referred to in ENF 8.5 to ENF 8.7 ~~who is neither an approved person nor employed by a firm~~, the FSA will consider the criteria set out in ENF 8.5.2G (1), (3) and (5).

...

13.3.6G A firm (or approved person) may ask the FSA to permit the firm (or approved person) to pay a financial penalty by instalments. However, the FSA will consider agreeing to payment of a financial penalty by instalments only where there is verifiable evidence of serious financial hardship or financial difficulties if the firm or approved person were required to pay the full payment in a single instalment. This reflects the fact that the purpose of a penalty is not to render a firm or approved person insolvent or to threaten solvency. The FSA will determine the appropriate level and number of instalments having regard to the overall circumstances of the case. However, the period within which the full payment of the penalty must be made will not generally exceed one year from the date of the final notice.

...

13.5.8G ENF 13.3.6G contains guidance concerning requests for permission to

pay financial penalties by instalments. That *guidance* also applies to penalties for late submission of reports.

...

14.7.6G

A *person* may ask the *FSA* to permit the *person* to pay a financial penalty in a *market abuse* case by instalments. However, the *FSA* will consider agreeing to payment of a financial penalty by instalments only where there is verifiable evidence of serious financial hardship or financial difficulties if the *person* were required to pay the full payment in a single instalment. This reflects the fact that the purpose of a penalty is not to render a *person* insolvent or to threaten solvency. The *FSA* will determine the appropriate level and number of instalments having regard to the overall circumstances of the case. However, the period within which the full payment of the penalty must be made will not generally exceed one year from the date of the *final notice*.

**COMPLAINTS SOURCEBOOK (MORTGAGE ENDOWMENT COMPLAINTS)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions listed in Schedule 4 to the Complaints sourcebook (Powers exercised).
- B. The rule-making powers listed in that Schedule are specified for the purpose of section 153(2) of the Financial Services and Markets Act 2000 (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 February 2003.

**Amendments to the Complaints sourcebook (DISP)**

- D. The Complaints sourcebook (DISP) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Complaints Sourcebook (Mortgage Endowment Complaints) Instrument 2003.

By order of the Board  
16 January 2003

## Annex

### Amendment to the Complaints sourcebook (DISP)

In this Annex, underlining indicates new text. Where an entire new section is inserted, the place that it goes is indicated and the text is not underlined.

- 2.3.1 R (1) The *Ombudsman* cannot consider a complaint (except as described in (2)) if the complainant refers it to the *Financial Ombudsman Service*:  
...
- (c) more than six years after the event complained of or (if later) more than three years from the date on which he became aware (or ought reasonably to have become aware) that he had cause for complaint, unless he has referred the complaint to the *firm* or *VJ participant* or to the *Ombudsman* within that period and has a written acknowledgement or some other record of the complaint having been received (but see *DISP* 2.3.5R – *DISP* 2.3.6R).
- (2) The *Ombudsman* can consider complaints made outside the time limits in (1)(b) or (c) when, in his view, the failure to comply with the time limits was as a result of exceptional circumstances or where he is required to do so by *the Ombudsman Transitional Order* (see *DISP* 2.3.2G) or where the *firm* has not objected to the *Ombudsman* considering the complaint.

After *DISP* 2.3.1R, insert the following new paragraph:

- 2.3.1A G If the complaint relates to the sale of an endowment *policy* for the purpose of achieving capital repayment of a mortgage, the receipt by the complainant of a letter which states that there is a risk (rather than a high risk) that the policy would not, at maturity, produce a sum large enough to repay the target amount is not, itself, sufficient to cause the three year time period in *DISP* 2.3.1R(1)(c) to start to run.

After *DISP* 2.3.5R, insert the following new paragraphs:

#### Exception for mortgage endowment complaints

- 2.3.6 R (1) If a complaint relates to the sale of an endowment *policy* for the purpose of achieving capital repayment of a mortgage and the complainant would, as a result of this *rule* *DISP* 2.3.6, have more time to refer the complaint than under *DISP* 2.3.1R(1)(c), the time for referring a complaint to the *Financial Ombudsman Service*:

- (a) starts to run from the date the complainant receives a letter from a *firm* or *VJ participant* warning the complainant that there is a high risk that the *policy* will not, at maturity, produce a sum large enough to repay the target amount; and
  - (b) ends six months from the date the complainant receives a second letter from a *firm* or *VJ participant* containing the same warning or other reminder of the need to act.
- (2) Paragraph (1) does not apply if:
- (a) the *Ombudsman* is of the opinion that, in the circumstances of the case, it is appropriate for *DISP* 2.3.1R(1)(c) to apply without modification; or
  - (b) in respect of any particular complaint, the *firm* can show that the three year period specified in *DISP* 2.3.1R(1)(c) had started to run before the complainant received any such letter as mentioned in *DISP* 2.3.6R(1)(a).

**COMPENSATION SOURCEBOOK (CREDIT UNIONS)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 157(1) (Guidance);
  - (4) section 213 (The compensation scheme); and
  - (5) section 214 (General).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 February 2003.

**Amendments to the Compensation sourcebook**

- D. The Compensation sourcebook is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Compensation Sourcebook (Credit Unions) Instrument 2003

By order of the Board  
16 January 2003



## Annex

### Amendments to COMP

#### Transitional Provisions

After transitional provision 4, insert the following new transitional provisions:

1 Table Transitional Provisions Table

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional Provision	(5) Transitional provision: dates in force	(6) Handbook Provisions coming into force
...					
5	<i>COMP</i> 6.2.1R	R	<p><u>Credit unions</u></p> <p>In relation to a <i>claim</i> or potential <i>claim</i> referred to in (1) or (2), a <i>relevant person</i> is also any credit union which:</p> <p>(1) becomes unable, or is likely to become unable, to satisfy <i>claims</i> against it which relate to <i>deposits</i> which were accepted before 2 July 2002; or</p> <p>(2) (a) has ceased to have <i>Part IV permission</i> by virtue of article 3(4) of the Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (SI 2002/704) (failure to comply with a direction to re-apply for Part IV permission); and</p> <p>(b) thereafter, becomes unable, or is likely to become unable, to satisfy <i>claims</i> against it</p>	Indefinitely	<i>Commencement</i>

			which relate to <i>deposits</i> which were accepted on or after 2 July 2002 but before the date on which it ceased to have <i>Part IV permission</i> .		
6	COMP 6.2.1R	G	<p>In consequence of transitional provision 5R, compensation can be provided:</p> <p>(a) in respect of a credit union which is unable, or likely to become unable, to satisfy <i>claims for protected deposits</i> accepted before 2 July 2002; and</p> <p>(b) where a credit union has ceased to hold a <i>Part IV permission</i> (because of failure to comply with a direction to re-apply for the <i>Part IV permission</i>), for <i>protected deposits</i> accepted on or after 2 July 2002 but before the date at which it ceased to have the <i>Part IV permission</i>.</p>		
7	COMP 6.2.1R	G	In consequence of transitional provision 5R(1), a credit union becomes a <i>relevant person</i> in respect of <i>deposits</i> accepted before 2 July 2002.		

**MARKET CONDUCT SOURCEBOOK (AMENDMENT NO 5)  
INSTRUMENT 2003**

**Powers Exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

**Commencement**

- B. This instrument comes into force on 1 March 2003.

**Amendments to the Market Conduct sourcebook**

- C. MAR 1 (The Code of Market Conduct) is amended in accordance with Annex A to this instrument.

**Amendments to the Glossary**

- D. The Glossary is amended in accordance with Annex B to this instrument.

**Citation**

- E. This instrument may be cited as Market Conduct Sourcebook (Amendment No 5) Instrument 2003.

By order of the Board  
20 February 2003

## Annex A

### Amendments to MAR 1 (The Code of Market Conduct)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.2.12G The *FSA* is satisfied that the ~~*RIE*~~ rule books of the *prescribed markets* do not permit or require *behaviour* which amounts to *market abuse*.

...

1.11.2G Section 118(3) allows the Treasury to prescribe markets and *qualifying investments*. This is the purpose of the ~~Financial Services and Markets Act 2000 (Prescribed markets and Qualifying investments) Order 2001~~ *Prescribed Markets and Qualifying Investments Order*. ...

## Annex B

### Amendment to the Glossary

Amend the following definition as shown (underlining indicates new text and striking through indicates deleted text).

*prescribed market* a market which has been prescribed by the Treasury in the *Prescribed Markets and Qualifying Investments Order* (see *MAR 1* ~~(Code of market conduct 1.11.2G~~ (Prescribed markets and qualifying investments)).

**ENFORCEMENT MANUAL (AMENDMENT) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) the Financial Services and Markets Act 2000 (Guidance).

**Commencement**

- B. This instrument comes into force on 1 March 2003.

**Amendments to the Enforcement manual**

- C. The Enforcement manual is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Enforcement Manual (Amendment) Instrument 2003.

By order of the Board  
20 February 2003

## Annex

### Amendments to the Enforcement manual

In this Annex, underlining indicates new text, and striking through indicates deleted text.

8.6.1AG Where the individual concerned is not an *approved person*, the *FSA* will not have the option of withdrawing approval, nor will it generally have the option of exercising its disciplinary powers in relation to the individual concerned, and therefore a *prohibition order* may be the only appropriate action available. In these cases, the *FSA* will consider the severity of the risk posed by the individual. It may prohibit the individual where it considers it necessary to achieve the *FSA's regulatory objectives* of maintaining market confidence in the *financial system*, promoting public awareness, protecting *consumers* and preventing *financial crime*.

8.6.2G When considering whether to exercise its power to make a *prohibition order* against an individual employed or formerly employed by a *firm* who is not an *approved person*, the *FSA* will consider those factors set out in *ENF 8.5.2G (1)*, *ENF 8.5.2G (3)*, *ENF 8.5.2G (5)* and, if relevant, *ENF 8.5.2G (2) (in relation to conduct when an individual was an approved person)* and *ENF 8.5.2G (6)*.

...

**COMPENSATION SOURCEBOOK (FUNDING RULES)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 213 (The compensation scheme); and
  - (4) section 214 (General).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 March 2003.

**Amendments to the Compensation sourcebook**

- D. The Compensation sourcebook is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Compensation Sourcebook (Funding Rules) Instrument 2003.

By order of the Board  
20 February 2003



## Annex

### Amendments to the Compensation sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 13.4.15A R
- (1) The FSCS may use any money held to the credit of any *sub-scheme* to repay borrowing from a third party incurred to pay *establishment costs*, if in the opinion of the FSCS this would be to the benefit of *participant firms*.
- (2) Where the FSCS acts in accordance with (1), it must ensure that:
- (a) future *establishment costs levies* are used first to repay all amounts borrowed from the appropriate *sub-schemes*;
- (b) interest is paid to the appropriate *sub-schemes* at a rate equivalent to the Bank of England's repo rate from time to time in force; and
- (c) the amount lent by any *sub-scheme* is taken into account by the FSCS when considering whether to impose a levy under COMP 13.4.1R.

...

13.4.20R Remission of levy or additional administrative fee

If a *participant firm's* share of a levy or an additional administrative fee under COMP 13.8.4R would be ~~an amount~~ so small that, in the opinion of the FSCS, the costs of collection would be disproportionate to the amount payable~~received~~, the FSCS may treat the *participant firm* as if ~~the~~its share of the levy or additional administrative fee amounted to zero.

**RECOGNISED INVESTMENT EXCHANGE AND RECOGNISED CLEARING HOUSE  
SOURCEBOOK (AMENDMENT) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

**Commencement**

- B. This instrument comes into force on 1 April 2003.

**Amendments to the Recognised Investment Exchange and Recognised Clearing House  
sourcebook (REC)**

- C. REC is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Recognised Investment Exchange and Recognised Clearing House Sourcebook (Amendment) Instrument 2003.

By order of the Board  
20 February 2003

**Annex  
Amendments to REC**

After *REC 2.5*, insert the following new section:

2.5A            Guidance on Public Interest Disclosure Act:  
Whistleblowing

Application and purpose

Application

2.5A.1        G    This section is relevant to every *UK recognised body* to the extent that the Public Interest Disclosure Act 1998 (“PIDA”) applies to it.

Purpose

2.5A.2        G    (1)    The purposes of this section are to:

(a)    provide *UK recognised bodies* with *guidance* regarding the provisions of PIDA; and

(b)    encourage *UK recognised bodies* to consider adopting and communicating to workers appropriate internal procedures for handling workers’ concerns as part of an effective risk management system.

(2)    In this section “worker” includes, but is not limited to, an individual who has entered into a contract of employment.

2.5A.3        G    The *guidance* in this section concerns the effect of PIDA in the context of the relationship between *UK recognised bodies* and the *FSA*. It is not comprehensive guidance on PIDA itself.

Practical measures

Effect of PIDA

2.5A.4        G    Under PIDA, any clause or term in an agreement between a worker and his employer is void in so far as it purports

to preclude the worker from making a protected disclosure (that is, “blow the whistle”).

2.5A.5 G In accordance with section 1 of PIDA:

- (1) a “protected disclosure” is a qualifying disclosure which meets the relevant requirements set out in that section;
- (2) a “qualifying disclosure” is a disclosure, made in good faith, of information which, in the reasonable belief of the worker making the disclosure, tends to show that one or more of the following (a “failure”) has been, is being, or is likely to be, committed:
  - (a) a criminal offence; or
  - (b) a failure to comply with any legal obligation; or
  - (c) a miscarriage of justice; or
  - (d) the putting of the health and safety of any individual in danger; or
  - (e) damage to the environment; or
  - (f) deliberate concealment relating to any of (a) to (e);

it is immaterial whether the relevant failure occurred, occurs or would occur in the *United Kingdom* or elsewhere, and whether the law applying to it is that of the *United Kingdom* or of any other country or territory.

Internal procedures

- 2.5A.6 G
- (1) *UK recognised bodies* are encouraged to consider adopting appropriate internal procedures which will encourage their workers with concerns to blow the whistle internally about matters which are relevant to the functions of the *FSA*.
  - (2) In considering appropriate internal procedures, *UK recognised bodies* may find the *guidance* provided

to *firms* in SYSC 4.2.2 G(2) and (3) helpful.

Link to fitness and propriety

- 2.5A.7 G In determining whether a *UK recognised body* is a fit and proper *person*, the *FSA* may have regard to any relevant factor including, but not limited to, how the *UK recognised body* and *key individuals* have complied with any relevant law (see *REC 2.4.3 G (9)*).

**GENERAL PROVISIONS AND GLOSSARY (AMENDMENT NO 6)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 157(1) (Guidance);
  - (4) section 213 (The compensation scheme);
  - (5) section 214 (General);
  - (6) section 293 (Notification requirements); and
  - (7) paragraph 17(1) of Schedule 1 (Fees).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 May 2003.

**Amendments to the General provisions**

- D. The General provisions are amended in accordance with Annex A to this instrument.

**Amendment to the Glossary**

- E. The Glossary is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the General Provisions and Glossary (Amendment No 6) Instrument 2003.

By order of the Board  
20 March 2003

## Annex A

### Amendments to the General provisions

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### General Provisions

##### Chapter 1

##### **Provisions which apply to all authorised persons**

##### **FSA approval and emergencies**

#### 1.1 Application

- 1.1.1 R (1) This chapter applies to every *firm*. GEN 1.3 (Emergency) also applies to an unauthorised person to whom a rule in the Handbook applies.

...

#### 1.3 Emergency

- 1.3.1 G The *FSA* recognises that there may be occasions when, because of a particular emergency, a ~~*firm person*~~ (generally a *firm*, but in certain circumstances, for example in relation to *price stabilising rules* or *small e-money issuer rules*, an *unauthorised person*) may be unable to comply with a particular rule in the Handbook. The purpose of *GEN 1.3.2R* is to provide appropriate relief from the consequences of contravention of such a rule in those circumstances.

- 1.3.2 R (1) If any emergency arises which:
- (a)~~(b)~~ makes it impracticable for a ~~*firm person*~~ to comply with a particular rule in the Handbook; ~~and~~
  - (b)~~(a)~~ could not have been avoided by the ~~*firm person*~~ taking all reasonable steps; and
  - (c) is outside the control of the ~~*firm person*~~, its *associates* and agents (and of its and their *employees*);
- the ~~*firm person*~~ will not be in contravention of that *rule* to the extent that, in consequence of the emergency, compliance with that *rule* is impracticable.
- (2) Paragraph (1) applies only for so long as:
- (a) the consequences of the emergency continue; and

- (b) the ~~firm~~ *person* can demonstrate that it is taking all practicable steps to deal with those consequences, to comply with the *rule*, and to mitigate losses and potential losses to its *clients* (if any).
- (3) ~~A firm~~ The *person* must notify the *FSA* as soon as practicable of the emergency and of the steps it is taking and proposes to take to deal with the consequences of the emergency.
- (4) A notification under (3) must be given to or addressed and delivered in accordance with SUP 15.7 (Form and method of notification) (whether or not the *person* is a *firm*). If the *person* is not a *firm*, the notification must be given to or addressed for the attention of:

IFD Contact Centre  
11th Floor  
The Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
E14 5HS

(tel: 0845 606 9966)

...

- 1.3.4 G In the context of *GEN* 1.3.2R, an action is not practicable if it involves a ~~firm~~ *person* going to unreasonable lengths.



## **Annex B**

### **Amendment to the Glossary**

Insert the following new definition in the appropriate alphabetical position:

regulatory costs      the periodic fees payable to the FSA by a participant firm in accordance with SUP 20 (Fees rules)

**INTERIM PRUDENTIAL SOURCEBOOK FOR BANKS (AMENDMENT NO 3)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

**Commencement**

- B. This instrument comes into force on 1 May 2003.

**Amendments to the Interim Prudential sourcebook for banks**

- C. The Interim Prudential sourcebook for banks is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Interim Prudential Sourcebook for Banks (Amendment No 3) Instrument 2003.

By order of the Board  
20 March 2003

## Annex

### Amendments to IPRU(BANK)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### Chapter BC Section 3

#### 3 RISK WEIGHTING FRAMEWORK:ON BALANCE SHEET

##### 3.2.5 50% weighting:

7 The following types of asset should attract a 50%weighting:

- (a) loans to individuals *fully and completely secured* by a first priority charge on residential property that is (or is to be) occupied by the borrower or is rented;

“fully secured” means the value of property should be greater than or equal to the value of the loan (ie maximum loan to value of 100%). There is no requirement to revalue properties on a regular basis, but where such a valuation has found that the loan to value ratio exceeds 100% such loans should be weighted at 100%. (However, if the shortfall in the security value is fully covered by a specific provision, the net amount of the exposure may continue to be weighted at 50%). Conversely, where revaluation indicates that the loan to value ratio has fallen to 100% the loan may be weighted at 50%.

- (b) Loans to ~~housing associations~~ registered social landlords, registered with the Housing Corporation or ~~Scottish Homes~~ Communities Scotland or the ~~Welsh Office~~ National Assembly for Wales, *fully secured* by a mortgage on residential property that is:
- (i) already let; or
- (ii) under development and will be let, on condition that the development attracts ~~Housing Association Grant (HAG)~~ Social Housing Grant (SHG) and/or other public subsidy on equivalent terms, of an amount equal to or greater than, 50% of the approved total scheme cost, the security for which is subordinated to the loan, where the funding body has legally committed itself to the full payment of the subsidy.
- (c) loans to public universities, fully secured by a mortgage on residential property that is:
- (i) already let; or
- (ii) under development and will be let, on condition that the lender is in possession of a certificate, issued by a quantity surveyor or architect appointed by the bank, showing work to the value of 20% of the projected finished end value of the product

(excluding cost of land) has been completed, prior to any draw down under the loan;

and can readily be sold or let in the non-student market.

~~(e)~~(d) mortgage sub-participations, where the risk to the sub-participating bank is fully and specifically secured against residential mortgage loans which would themselves qualify for the 50% weight;

~~(d)~~(e) mortgage-backed securities (MBS), issued by special purpose mortgage finance vehicles, where the following applies conditions are met:

(i) the notes embody an express promise to repay the ~~bearer~~ noteholder;

(ii) the issue documentation contains provisions which would ultimately enable noteholders to initiate legal proceedings directly against the issuer of the MBS. As an example such provisions would allow noteholders to proceed against the issuer where the trustee, having become bound to take steps and/or to proceed against the issuer, fails to do so within a reasonable time and such failing is continuing;

(iii) the documentation contains provisions which would ultimately enable noteholders to acquire the legal title to the security (i.e. the mortgagee's interest in it) and to realise the security in the event of a default by the mortgagor;

(iv) under the issue:

a) ~~the mortgage loans are fully secured against residential mortgages, with a first priority charge themselves~~ qualify for the 50% weight (see Chapter 3.2.5.7(a), (b) and (c) above); and

b) the mortgage loans are not in default at the time at which they are transferred to the vehicle;

(v) the vehicle's activities are restricted by its articles of association to mortgage business. The vehicle may hold assets qualifying for a risk weighting of 50% or less.

a) ~~“Fully secured” means the value of property should be greater than or equal to the value of the loan (i.e. maximum loan to value of 100%). There is no requirement to revalue properties on a regular basis, but where such a valuation has found that the loan to value ratio exceeds 100% such loans should be weighted at 100%. (However, if the shortfall in the security value is fully covered by a specific provision, the net amount of the exposure may continue to be weighted at 50%). Conversely, where revaluation indicates that the loan to~~

~~value ratio has fallen to 100% the loan may be weighted at 50%.~~

- ~~(e) loans to public universities, fully secured by a mortgage on residential property that is:
  - ~~(i) already let; or~~
  - ~~(ii) under development and will be let, on condition that the lender is in possession of a certificate, issued by a quantity surveyor or architect appointed by the society, showing work to the value of 20% of the projected finished end value of the product (excluding cost of land) has become completed, prior to any draw down under the loan; and~~
  - ~~(iii) can readily be sold or let in the non-student market.~~~~

**INTERIM PRUDENTIAL SOURCEBOOK FOR BANKS (AMENDMENT NO 4)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

**Commencement**

- B. This instrument comes into force on 1 May 2003.

**Amendments to the Interim Prudential sourcebook for banks**

- C. The Interim Prudential sourcebook for banks is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Interim Prudential Sourcebook for Banks (Amendment No 4) Instrument 2003.

By order of the Board  
20 March 2003

## Annex

### Amendments to IPRU(BANK)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### Chapter LE Section 5

##### 5 KEY DEFINITIONS: COUNTERPARTY

##### 5.1 Counterparty

...

3 The identity of a *counterparty* will generally be one of the following:

...

(b) ~~the person guaranteed (where the bank is providing such a guarantee)~~  
whose obligations the bank is guaranteeing (where the bank is providing such a guarantee);

...

#### Chapter LE Section 9

##### THE 25% LIMIT

##### 9.2 Exempt exposures

##### 9.2.6 Parental guarantees

14 A *subsidiary* bank may undertake exposures of any maturity in excess of 25% of LECB to unconnected counterparties provided:

...

(c) the exposures are entered into within the terms of a policy agreed by the parent bank.

...

d) For the purposes of (c) above, a suitable guarantee is either a *parental guarantee* or a *capital maintenance agreement*.

...

ii) *A capital maintenance agreement* is an undertaking by the parent bank to provide a sufficient amount of capital of the appropriate kind to restore the subsidiary bank's

risk asset ratio to above its supervisory target ratio if exposures covered by the agreement subsequently become non-performing capital to above its supervisory capital requirement (i.e. the amount of capital it should have in order to comply with Rule 3.3.13 in Chapter GN).

The subsidiary should pre-notify an exposure which is (even partially) covered by an a capital maintenance agreement, but the risk is not transferred only the portion of the exposure which is covered by the capital maintenance agreement may be treated as an exposure to the parent bank.

The parent bank should report the amount covered by the capital maintenance agreement as an exposure to the underlying counterparty.



**INTERIM PRUDENTIAL SOURCEBOOK FOR BUILDING SOCIETIES  
(AMENDMENT NO 5) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

**Commencement**

- B. This instrument comes into force on 1 May 2003.

**Amendments to the Interim Prudential sourcebook for building societies**

- C. The Interim Prudential sourcebook for building societies is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Interim Prudential Sourcebook for Building Societies (Amendment No 5) Instrument 2003.

By order of the Board  
20 March 2003

## Annex

### Amendments to IPRU(BSOC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### Annex 1B:RISK ASSET WEIGHTS

##### 1B.5 Assets to be weighted at 50%

1B.5.1 The following assets should be weighted at 50%:

- (1) Mortgage-backed securities (MBS) issued by special purpose mortgage finance vehicles where the following conditions are met:
  - ~~(a)~~ ~~they are fully secured at all times on a pool of first mortgages on residential property, no part of which is used for non residential purposes, or on loans to Registered Social Landlords which are registered with the Housing Corporation or Scottish Homes or the National Assembly of Wales or the Northern Ireland Department of Social Development, fully secured by a mortgage on a residential property that is:~~
    - ~~(i)~~ ~~already let; or~~
    - ~~(ii)~~ ~~under development and will be let on condition that the development attracts Social Housing Grant (SHG) and/or other public subsidy on equivalent terms and the loans are fully secured by a charge (but not necessarily a first priority charge) on a residential property owned by Registered Social Landlords which is rented;~~
  - ~~(b)~~(a) the notes embody an express promise to repay the noteholder;
  - ~~(c)~~(b) the issue documentation contains provisions which would ultimately enable noteholders to initiate legal proceedings directly against the issuer of the MBS. As an example such provisions would allow noteholders to proceed against the issuer where the trustee, having become bound to take steps and/or to proceed against the issuer, fails to do so within a reasonable time and such failure is continuing;
  - ~~(d)~~(c) the documentation contains provisions which would ultimately enable noteholders to acquire the legal title to the security (i.e. the mortgagee's interest in it) and to realise the security in the event of a default by the mortgagor;
  - ~~(e)~~(d) under the issue:
    - (i) the mortgage loans themselves qualify for the 50% weighting (see Annex 1B.5.1 (2), (3) and (4)); and

- (ii) the mortgage loans are ~~should~~ not be in default at the time at which they are transferred to the vehicle;
  - ~~(f)~~(e) the vehicle's activities are restricted by its articles of association to mortgage business. The vehicle may also hold assets qualifying for a risk weighting of less than 50%;
  - ~~(g)~~(f) the notes do not absorb more than their pro rata share of losses in the event of arrears or default (see chapter 10 for treatment of junior or B notes).
- (2) Loans to individuals fully ~~and completely~~ secured by a first priority charge on residential property that is (or is to be) occupied by the borrower or is rented.
  - (3) Loans to Registered Social Landlords, registered with the Housing Corporation, or ~~Scottish Homes~~ Communities Scotland or the National Assembly ~~of~~ for Wales or the Northern Ireland Department ~~of~~ for Social Development, fully secured by a mortgage on residential property that is:
    - (a) already let; or
    - (b) under development and will be let, on condition that the development attracts Social Housing Grant (SHG) and/or other public subsidy on equivalent terms, of an amount equal to, or greater than, 50% of the approved total scheme cost, the security for which is subordinated to the loan, where the funding body has legally committed itself to the full payment of the subsidy.
  - (4) Loans to public universities, fully secured by a mortgage on a residential property that is:
    - (a) already let; or
    - (b) under development and will be let, on condition that the lender is in possession of a certificate, issued by a quantity surveyor or architect appointed by the society, showing that work to the value of 20% of the projected finished end value of the project (excluding cost of land) has been completed, prior to any draw down under the loan; ~~and~~
      - ~~(e)~~ and can readily be sold or let on the non student market.

N.B. For the purposes of paragraphs 1B.5.1(3) and (4), once a property has been let it is not necessary to increase the weighting to 100% during a subsequent temporary void.

**INTERIM PRUDENTIAL SOURCEBOOK FOR FRIENDLY SOCIETIES  
(MINOR CHANGES NO 2) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 138 (General rule-making power);
  - (2) section 150(2) (Actions for damages); and
  - (3) section 156 (General supplementary powers).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 April 2003.

**Amendment of the Interim Prudential sourcebook for friendly societies**

- D. IPRU(FSOC) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Interim Prudential Sourcebook for Friendly Societies (Minor Changes No 2) Instrument 2003.

By order of the Board  
20 March 2003

## Annex

### Amendments to Interim Prudential Sourcebook for Friendly Societies (IPRU(FSOC))

In this Annex, underlining indicates new text and striking through indicates deleted text.

The definition of *relevant capital sum* in rule 7.1 is amended as follows:

- (a) subject to (b) and (c):
- ~~(a)~~ (i) for whole life assurances, the sum assured;
  - ~~(b)~~ (ii) for policies where a sum is payable on maturity (including policies where a sum is also payable on earlier death), the sum payable on maturity;
  - ~~(c)~~ (iii) for deferred annuities, the capitalised value of the annuity at the vesting date (or the cash option if it is greater);
  - ~~(d)~~ (iv) for capital redemption contracts, the sums payable at the end of the contract period; and
  - ~~(e)~~ (v) for *linked long-term contracts*, notwithstanding ~~(a)~~ (i) to ~~(d)~~ (iv), the lesser of:
    - ~~(i)~~ (A) the amount for the time being payable on death, and
    - ~~(ii)~~ (B) the aggregate of the value for the time being of the units allocated to the contract (or, where entitlement is not denoted by means of units, the value for the time being of any other measure of entitlement under the contract equivalent to units) and the total amount of the *premiums* remaining to be paid during such part of the term of the contract as is appropriate for *zillmerising*, or, if such *premiums* are payable beyond the age of seventy five, until that age, ~~excluding in all cases any vested reversionary bonus and any capital sums for temporary assurances;~~
- excluding in all cases any vested reversionary bonus;
- (b) notwithstanding (a), where, under a contract relating to any such business as is mentioned in (a), the payment of *premiums* is to stop before the sum assured becomes due, the *mathematical reserves* appropriate for that contract at the end of the *premium-paying term*; and
- (c) notwithstanding (a), for temporary assurances, the sum assured on the *valuation date*.

Paragraph 9(4) of Appendix 5 is amended as follows:

- ~~(4) — For the purposes of this rule,~~
  - ~~(a) — for contracts other than temporary assurances, the *relevant capital sum* under a contract must be arrived at in accordance with rule 4.9(4); and~~
  - ~~(b) — for temporary assurances, the *relevant capital sum* must be the sum assured on the *valuation date*.~~

**INTERIM PRUDENTIAL SOURCEBOOK FOR INSURERS  
(MINOR CHANGES NO 3) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 138 (General rule-making power);
  - (2) section 150(2) (Actions for damages);
  - (3) section 156 (General supplementary powers); and
  - (4) section 157 (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 April 2003.

**Amendment of the Interim Prudential sourcebook for insurers**

- D. IPRU(INS) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Interim Prudential Sourcebook for Insurers (Minor Changes No 3) Instrument 2003.

By order of the Board  
20 March 2003

## Annex

### Amendments to Interim Prudential Sourcebook for Insurers (IPRU(INS))

In this Annex, underlining indicates new text and striking through indicates deleted text.

Rule 5.10(4) is amended as follows:

- (4) For the purposes of this rule -
- (a) ~~for contracts other than temporary assurances subject to (b) and (c), the relevant capital sum under a contract must be arrived at in accordance with rule 2.12(4) means -~~
- (i) for whole life assurances, the sum assured,
- (ii) for policies where a sum is payable on maturity (including policies where a sum is also payable on earlier death), the sum payable on maturity,
- (iii) for deferred annuities, the capitalised value of the annuity at the vesting date (or the cash option if it is greater),
- (iv) for capital redemption contracts, the sums payable at the end of the contract period, and
- (v) for linked long-term contracts, notwithstanding (i) to (iv), the lesser of -
- (A) the amount for the time being payable on death, and
- (B) the aggregate of the value for the time being of the units allocated to the contract (or, where entitlement is not denoted by means of units, the value for the time being of any other measure of entitlement under the contract equivalent to units) and the total amount of the premiums remaining to be paid during such of the term of the contract as is appropriate for zillmerising or, if such premiums are payable beyond the age of seventy-five, until that age,
- excluding in all cases any vested reversionary bonus; and
- (b) notwithstanding (a), where, under a contract relating to any such business as is mentioned in (a), the payment of premiums is to stop before the sum assured becomes due, relevant capital sum means the



mathematical reserves appropriate for that contract at the end of the premium-paying term; and

~~(b)(c)~~ notwithstanding (a), for temporary assurances, the relevant capital sum means must be the sum assured on the relevant date.

The instructions to Form 12 in Appendix 9.1 are amended as follows:

**~~Instruction-Instructions~~ for completion of ~~Form~~ **Forms 11 and 12****

1. In the case of a *marine mutual* completing an abbreviated *return* under rule 9.36A, units must be the same as those used in Form M1. If units are in US\$ or US\$000, then references to the sterling equivalent of Euro in lines 15 to 17 of Form 11 and lines 32 to 35 of Form 12 must be taken to be references to the US\$ equivalent of the specified amount of Euro and the Forms must be amended to reflect the use of US\$. The bases of conversion adopted must be stated by way of a supplementary note to the Forms.
2. If the *insurer* has not been in existence long enough to acquire a reference period, lines 21 to 41 must be ignored.

Paragraph 27 of Guidance Note 2.2 (Guidance on applications for waivers relating to implicit items) is amended as follows:

The estimated annual profit should be taken as the average annual surplus arising in the *long-term insurance fund* (~~including the change in any investment reserve~~) over the last five *financial years* up to the date of the most recent available valuation under rule 9.4 of *IPRU(INS)* which has been submitted to the *FSA* prior to, or together with, the application. For this purpose, deficiencies arising should be treated as negative surpluses. Where a *firm's financial year* has altered, the surplus arising in a period falling partly outside the relevant five year period should be assumed to accrue uniformly over the period in question for the purpose of estimating the profits arising within the five year period. When there has been a transfer of a block of business into the *firm* (or out of the *firm*) during the period, the impact of the transfer will need to be taken into account to reflect the remaining portfolio.

**STAKEHOLDER PENSION DECISION TREES  
(AMENDMENT) INSTRUMENT 2003**

**Powers exercised**

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions of the Financial Services and Markets Act 2000 (the “Act”):

- (1) section 138 (General rule making power);
- (2) section 155(7) (Consultation); and
- (3) section 156 (General and supplementary powers).

B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

C. This instrument comes into force on 6 April 2003.

**Amendments to the Conduct of Business sourcebook**

D. The Conduct of Business sourcebook is amended in accordance with the Annex to this instrument.

**Citation**

E. This instrument may be cited as the Stakeholder Pension Decision Trees (Amendment) Instrument 2003.

By order of the Board  
20 March 2003

## Annex

### Amendments to the Conduct of Business sourcebook

COB 6 Annex 1 R In the section headed “I can’t afford to contribute much regularly – so what will I get from my stakeholder pension?”, replace the words “2.4% a year in excess of inflation” in the boxed area, with the words, “1.8% a year in excess of inflation.”

COB 6 Annex 1 R Delete the estimated pension tables at Employed Tree 3, Self-Employed Tree 2 and Not Employed Tree 2 and replace, in each case, with the following table:

Your approximate age now	What you pay per month for the first year (tax rebates will be added to this amount)							
	£20		£50		£100		£200	
	Initial monthly pension if you retire at 65	Initial monthly pension if you retire at 60	Initial monthly pension if you retire at 65	Initial monthly pension if you retire at 60	Initial monthly pension if you retire at 65	Initial monthly pension if you retire at 60	Initial monthly pension if you retire at 65	Initial monthly pension if you retire at 60
20	£123	£86	£309	£217	£618	£434	£1,237	£869
25	£99	£69	£249	£172	£499	£345	£998	£691
30	£79	£54	£198	£135	£397	£270	£795	£540
35	£62	£41	£155	£103	£311	£206	£622	£412
40	£47	£30	£118	£75	£237	£151	£475	£302
45	£34	£20	£87	£52	£174	£104	£349	£208
50	£24	£12	£60	£32	£120	£64	£241	£128
55	£14	£5	£37	£14	£74	£29	£149	£59
60	£6		£17		£34		£69	

**CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT NO 11)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the powers listed in Schedule 4 to the Conduct of Business sourcebook.
- B. The rule-making powers listed in that Schedule are specified for the purpose of section 153(2) of the Financial Services and Markets Act 2000 (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 May 2003.

**Amendments to the Conduct of Business sourcebook**

- D. The Conduct of Business sourcebook is amended in accordance with Annex A to this instrument.
- E. Schedule 1 to the Conduct of Business sourcebook (Record keeping requirements) is amended in accordance with Annex B to this instrument.
- F. Schedule 2 to the Conduct of Business sourcebook (Notification requirements) is amended in accordance with Annex C to this instrument.

**Amendments to the Glossary**

- G. The Glossary is amended in accordance with Annex D to this instrument.

**Citation**

- H. This instrument may be cited as the Conduct of Business Sourcebook (Amendment No 11) Instrument 2003.

By order of the Board  
20 March 2003

## Annex A

### Amendments to the Conduct of Business sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 5.3.26 R (1) Every six months, a *firm* must notify the *FSA*, in writing, of the number of *pension opt-out* and the number of *pension transfer* transactions ~~within COB 5.3.25R~~ which it has ~~handled~~ arranged during the previous six months; ~~and it must also supply, at quarterly intervals, the following details in respect of the preceding quarter: A *firm* need not make a notification if it has not arranged any such transactions.~~
- (1A) A *firm* must also notify the *FSA*, in writing, at quarterly intervals, of the following details in respect of the preceding quarter:
- (a) the number of ~~*execution-only: pension opt-outs* or *pension transfers*~~ arranged if they exceed 1% of all the *firm's pension opt-outs* or *pension transfers* arranged during that quarter;
- (i) *pension opt-outs* arranged if they exceed 1% of all the *firm's pension opt-outs* arranged during the quarter; and
- (ii) *pension transfers* arranged if they exceed 1% of all the *firm's pension transfers* arranged during the quarter;
- (b) the number of: ~~*pension opt-outs* and *pension transfers*~~ arranged against the *firm's* advice if they exceed 1% of all the *opt-outs* and *pension transfers* arranged by the *firm* during the quarter; and
- (i) *pension opt-outs* arranged against the *firm's* advice if they exceed 1% of all the *firm's pension opt-outs* arranged by the *firm* during the quarter; and

(ii) pension transfers arranged against the firm's advice if they exceed 1% of all the firm's pension transfers arranged by the firm during the quarter; and

(c) the number of pension opt-outs and the number of pension transfers arranged on a correspondence-only basis if they exceed 1% of all the opt outs and transfers arranged by the firm during that quarter.

(1B) A firm must provide the information required by (1) and (1A) as soon as reasonably practicable after the end of the period.

(2) A firm must make ~~retain~~ records of the notifications required by (1) and (1A) and retain them indefinitely.

...

### Generic and stochastic projections

6.6.9 R ...

(2) ...

(3) A firm may issue a stochastic projection only where:

(a) the purpose is to indicate a range of possible outcomes; and

(b) either:

(i) it is provided for the purpose of a proposed transaction;  
or

(ii) it is provided in addition to a projection which:

(A) is not a stochastic projection but which complies with COB 6.6.4 R; or

(B) is a projection excepted under COB 6.6.5 R (6).

(4) A firm which issues a stochastic projection must ensure that:

- (a) it is based on a reasonable number of simulations and is consistent with the economic assumptions underlying the rates of inflation in COB 6.6.48A R and the intermediate rates of return in COB 6.6.50 R and COB 6.6.51 R;
- (b) its presentation does not reduce the impact of non-stochastic projections; and
- (c) it is issued only in circumstances in which the firm has taken reasonable steps to ascertain that the customer will be able to understand the stochastic projection.

6.6.9A E (1) For the purposes of COB 6.6.9 R (3)(a) and (4)(a) and (b):

- (a) to indicate a range of expected outcomes, a firm should present the results:
  - (i) as amounts showing the median (50%) figure and, in addition, at least the amounts at 10% and 90%, or at least the amounts at 20% and 80%; or
  - (ii) graphically showing the frequency of results from at least 10% to 90%; or
  - (iii) in a diagrammatic form which indicates both the range and frequency of results;
- (b) to base the stochastic projection on a reasonable number of simulations, a firm should incorporate the results of at least 500 simulations; to enable consistent projections to be issued and to facilitate recreating previously issued projections, a firm should use the same set of simulations until the investment model or the underlying assumptions are revised; and
- (c) to be consistent with the economic assumptions, a firm should ensure that:
  - (i) the parameters of each asset class are consistent with each other and the median (50%) result for a fund invested 70% in UK equities and 30% in UK government fixed interest stocks does not exceed a projection calculated using the intermediate rate of return from COB

6.6.50 R or COB 6.6.51 R; and

(ii) the investment model is tested and adjusted so that the results are consistent with COB 6.6.9R(4)(a).

(2) Compliance with (1) may be relied upon as tending to establish compliance with COB 6.6.9 R (3)(a) and (4)(a) and (b).



## Annex B

### Amendments to COB Schedule 1

In this Annex, underlining indicates new text and striking through indicates deleted text.

COB 5.3.26R(2)	Statistics of pension opt-out or <u>pension</u> transfer transactions <del>involving private</del> customers	Details of the notification required by COB 5.3.26 <u>R</u> (1) <del>and (1A)</del>	On making the notification	Indefinitely
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## Annex C

### Amendments to COB Schedule 2

In this Annex, underlining indicates new text and striking through indicates deleted text.

COB 5.3.26R	<u>pension</u> opt-out and <u>pension</u> transfer transactions <del>involving private</del> <del>customers</del>	in writing – number of <u>pension</u> opt-outs and <u>pension</u> <u>transfer</u> transactions the firms has <del>handled</del> <u>arranged</u> in previous 6 monthly period	6 monthly intervals	as soon as reasonably practicable
COB 5.3.26R	execution only <u>pension</u> opt-out and <u>pension</u> transfer transactions	in writing – number of transactions arranged if they exceed 1% of all the firm's <u>pension</u> opt-outs or <u>pension</u> transfers arranged during the quarter.	3 monthly intervals	as soon as reasonably practicable

COB 5.3.26R	<u>pension</u> opt-out and <u>pension</u> transfer transactions	in writing – number of transactions arranged against the firm's advice if they exceed 1% of all the firm's <u>pension</u> opt-outs or <u>pension</u> transfers arranged during the quarter.	3 monthly intervals	as soon as reasonably practicable
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COB 5.3.26R	<u>pension</u> opt-out and <u>pension</u> transfer transactions	in writing – <u>the</u> number of <u>any</u> transactions arranged on a correspondence – only basis <del>if they exceed 1% of all the opt outs and transfers arranged</del> by the firm during the quarter.	3 monthly intervals	as soon as reasonably practicable
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## Annex D

### Amendments to the Glossary

Amend the following definitions as shown (underlining indicates new text and striking through indicates deleted text).

- mark-up or mark-down* (a) (when a *firm* receives a *customer order* and takes a *principal* position in the relevant *investment* in order to fulfil that *customer order*)~~(that is, when the *firm* takes a *principal position in the relevant investment* which it would not otherwise take, except to fulfil that *customer order*)~~ the difference, if any, ~~difference~~ between:
- (i) the price at which the *firm* takes a *principal* position in the relevant *investment* in order to fulfil that *customer order*; and
  - (ii) the *price* at which the *firm* *executes* the transaction with its *customer*;
- (b) (when a *firm* *executes* a *customer order* against its own book and owes a duty of best execution) the difference between:
- (i) the *price* at which best execution would be achieved; and
  - (ii) the *price* at which the *firm* *executes* the transaction with its *customer*.

*stochastic projection* a *projection* showing a summary of results from repeated simulations using an investment model, where the model uses key financial parameters which are subject to random variations and are projected into the future.

**MARKET CONDUCT SOURCEBOOK  
(PRICE LIMITS UNDER THE PRICE STABILISING RULES)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 144 (Price stabilising rules);
  - (2) section 156 (General supplementary powers); and
  - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 May 2003.

**Amendments to the Market conduct sourcebook**

- D. MAR 2 (Price Stabilising Rules) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as Market Conduct Sourcebook (Price Limits under the Price Stabilising Rules) Instrument 2003.

By order of the Board  
20 March 2003

## Annex

### Amendments to the Market conduct sourcebook

#### Price Stabilising Rules

2.5.2 G The price limits are broadly similar whether the *stabilising action* is concerned with *relevant securities* or *associated securities* (including call *options*). However, the price limits do not extend to *debt securities* in the form of bonds, etc., or *investments similar to debt securities* such as convertibles or exchangeables. Pricing for them is subject instead to the requirements in *MAR 2.2.3R* that the *stabilising action* is taken to support the market price.

...

2.5.4 R ...

(2) The prohibition in (1) does not apply to ~~*stabilising action* related to investments falling within Articles 77 or 78 of the Regulated Activities Order (bonds, etc), nor within Article 80 (certificates, etc) that confer rights in respect of any of those investments. the purchase of, the agreement to purchase, or an offer or attempt to purchase or to agree to purchase, investments that fall within:~~

(a) article 77 or 78 of the Regulated Activities Order (bonds, etc); or

(b) article 77 or 78 and also fall within articles 79 (instruments giving entitlements to investments), 80 (certificates representing certain securities) or 83 (options); or

(c) article 79 or 80 that confer rights in respect of investments falling within article 77 or 78.

...

2.5.6 R Table Pricing ~~N~~notes

...

(3) ~~Convertible bonds, etc. For the purposes of *MAR 2.5.5R* and *MAR 2.5.6R* any investment falling within Article 76 and also within Article 77 or 79 of the Regulated Activities Order shall be treated as if it fell only within Article 76.~~

**APPLICATION FEES (2003/2004) INSTRUMENT 2003****Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 156 (General supplementary powers);
  - (2) section 157(1) (Guidance); and
  - (3) paragraph 17(1) of Schedule 1 (Fees).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 April 2003.

**Amendments to AUTH**

- D. AUTH is amended by inserting, as AUTH 4 Annex 1R (2003-4), the provisions in Annex A to this instrument.

**Amendments to CIS**

- E. CIS is amended by inserting, as CIS 18 Annex 1R (2003-4), the provisions in Annex B to this instrument.

**Amendments to PROF**

- F. PROF is amended by inserting, as PROF 6 Annex 1R (2003-4), the provisions in Annex C to this instrument.

**Amendments to REC**

- G. REC is amended by inserting, as REC 7 Annex 1R (2003-4), the provisions in Annex D to this instrument.

**Citation**

- H. This instrument may be cited as the Application Fees (2003/2004) Instrument 2003.

By order of the Board  
20 March 2003



## Annex A

### Annex 1R

## Authorisation fees payable in relation to the period from 1 April 2003 to 31 March 2004

### Part 1 - Authorisation fees payable

#### 1 Table

Application type (see Part 2)	Amount payable
(a) <i>Credit unions</i> - registration of common bond	£200
(b) <i>Version 1 credit unions</i> - authorisation	£300
(c) <i>Version 2 credit unions</i> - authorisation	£1,800
(d) Straightforward	£2,000
(e) Moderately complex	£5,000
(f) Complex	£25,000

### Part 2 - Complexity Groupings

#### 2 Table Straightforward Cases

Activity grouping	Description
A.3	<i>Friendly societies</i> only
A.4	<i>Friendly societies</i> only
A.12	Advisory arrangers, dealers or brokers (holding or controlling <i>client money</i> and/or assets)
A.13	Advisory only firms and advisory arrangers, dealers or brokers (not holding or controlling <i>client money</i> and/or assets)
A.14	Corporate finance advisers

#### 3 Table Moderately Complex Cases

Activity grouping	Description
A.1	<i>E-money issuers</i> only
A.5	<i>Managing agents</i> at Lloyd's
A.7	Fund managers (holding or controlling <i>client money</i> and/or assets)
A.9	<i>Operators, trustees</i> and <i>depositories</i> of <i>collective investment schemes</i>
A.10	<i>Firms dealing as principal</i>
A.11	Execution only arrangers, dealers or brokers

#### 4 Table Complex Cases

Activity grouping	Description
A.1	<i>Deposit acceptors</i> (excluding e-money issuers and <i>credit unions</i> )
A.3	<i>Firms</i> conducting insurance activities subject only to prudential regulation (excluding <i>friendly societies</i> )
A.4	<i>Firms</i> conducting insurance activities subject to both prudential and conduct of business regulation (excluding <i>friendly societies</i> )

### Part 3 - Variation of Permission Fees

5 The fee payable under SUP 6.3.22R is 50% of that payable under AUTH 4.2.2R.

6 There are no circumstances specified for the purposes of *SUP* 6.3.22R(2).

**Part 4 - Authorisation Fees for Treaty Firms**

7 If the *Treaty firm* wishes to undertake the permitted activities in question through its branch in the UK, the fee is 50% of the fee that would be payable under *AUTH* 4.2.2R.

8 If the *Treaty firm* wishes to undertake the permitted activities in question by providing services in the UK, the fee is 25% of the fee which would be payable under *AUTH* 4.2.2R.

**Part 5 - Activity Groupings**

9 The activity group definitions are set out in *SUP* 20 Annex 1R.

**Part 6 - Application for a certificate under article 54 of the Regulated Activities Order**

10 The amount payable in relation to each application is £2,000.

## Annex B

### Annex 1R

## Fees payable in relation to the period from 1 April 2003 to 31 March 2004

**1 Table Part A - Application and notification fees payable in relation to the period from 1 April 2003 to 31 March 2004.**

Section of the Act etc	Nature and purpose of fee	Payable by	Amount of fee	Umbrella scheme factor (Note 5)
Regulation 12 of the OEIC Regulations	On application for an order declaring a <i>scheme</i> to be an <i>ICVC</i>	An applicant (Note 3)	£1,200	2
Section 242	On application for an order declaring a <i>scheme</i> to be an <i>AUT</i>	An applicant (Note 3)	£1,200	2
Section 264	On giving notice under section 264 of the Act	The <i>operator</i> (Note 4)	£600	2
Section 270	On giving notice under section 270 of the Act	The <i>operator</i> (Note 4)	£600	2
Section 272	On application for an order declaring a <i>scheme</i> to be an individually recognised overseas <i>scheme</i>	An applicant (Note 3)	£14,000	2

**2 Table Part B - Periodic fees payable in relation to the period from 1 April 2003 to 31 March 2004**

(This part will be made at a later date.)

### Notes

- 3 The *fee* must accompany the application.
- 4 The *fee* must accompany the notice.
- 5 For an *umbrella scheme* the *fee* is multiplied by the factor shown in the final column of the above tables.

## Annex C

### Annex 1R

## Fees to be payable for the period from 1 April 2003 to 31 March 2004

1 Table Fees payable by *designated professional bodies*

Name of <i>designated professional body</i>	Amount payable	Due date
(Periodic fees will be made at a later date.)		
Any person seeking an order under section 326(1) of the <i>Act</i> (Designation of professional bodies)	£5,000	30 days after the order is granted

## Annex D

### Annex 1R

## Fees payable in relation to the period from 1 April 2003 to 31 March 2004

### 1 Table Fees payable in relation to the period from 1 April 2003 to 31 March 2004

In this table:

- the term recognised body includes a body which was a recognised investment exchange or a recognised clearing house recognised under the Financial Services Act 1986 and which is a recognised body as a result of Regulation 9 of the Recognition Requirements Regulations; and
- the term recognition order includes a recognition order made by the FSA under section 37 or section 39 of the Financial Services Act 1986 or a recognition order made by the Treasury under section 40 of the Financial Services Act 1986.

#### Part 1 – Periodic fees for UK recognised bodies in relation to the period from 1 April 2003 to 31 March 2004.

Name of UK recognised body	Amount Payable	Due Date
(This part will be made at a later date.)		

#### Part 2 – Periodic fees for recognised overseas bodies in relation to the period from 1 April 2003 to 31 March 2004.

Name of recognised overseas body	Amount Payable	Due Date
(This part will be made at a later date.)		

#### Part 3 – Application fees for applicants for recognition as a UK recognised body for the period from 1 April 2003 to 31 March 2004.

Description of applicant	Amount payable	Due Date
Applicant for recognition as a UK RIE	£75,000	Date the application is made
Applicant for recognition as a UK RCH	£75,000	
<b>Additional fees for applicant who proposes to:</b>		
- act as a central counterparty	£25,000	
- offer safeguarding and administration services	£25,000	
- use substantially new and untested information technology systems in the performance of its relevant functions	£25,000	

#### Part 4 – Application fees for applicants for recognition as an overseas recognised body for the period from 1 April 2003 to 31 March 2004.

Description of applicant	Amount payable	Due Date
Applicant for recognition as an recognised overseas body	£35,000	Date the application is made

**PERIODIC FEES (2002/2003) (NO 3) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 156 (General supplementary powers);
  - (2) section 157(1) (Guidance); and
  - (3) paragraph 17(1) of Schedule 1 (Fees).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 April 2003.

**Amendments to SUP**

- D. SUP is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Periodic Fees (2002/2003) (No 3) Instrument 2003.

By order of the Board  
20 March 2003

## Annex

In this Annex, underlining indicates new text and striking through indicates deleted text.

### **Firms cancelling or reducing the scope of their permission**

20.4.11G The *FSA* will not refund periodic fees if, after the start of the period to which they relate, a *firm* cancels its *permission*, or reduces its *permission* so that it then falls out of fee-block previously applied to it (but see *GEN 3* (Relieving Provisions)).

20.4.12R (1) If:

- (a) a *firm* makes an application to vary its *permission* (by reducing its scope), or cancel it, in the way set out in *SUP 6.3.15D* (Variation of permission) and *SUP 6.4.5D* (Cancellation of permission); and
- (b) the *firm* makes the application referred to in (a) before the start of the period to which the fee relates;

*SUP 20.2.1R* applies to the *firm* as if the relevant variation or cancellation of the *firm's permission* took effect immediately before the start of the period to which the fee relates.

(2) But (1) does not apply if, due to the continuing nature of the business, the variation or cancellation is not to take effect within three months of the start of the period to which the fee relates.

### **Firms acquiring businesses from other firms**

20.4.13R (1) This rule applies if a *firm* (A) acquires all or a part of the business of another *firm* (B), whether by merger, acquisition of goodwill or otherwise, in relation to which a periodic fee would have been payable by B.

(2) If, before the date on which A acquires the business, B had paid any periodic fee payable for the period in which the acquisition occurred, *SUP 20.4.1G* to *SUP 20.4.6R* do not apply to A in relation to the business acquired from B.

(3) If the acquisition occurs after the valuation date applicable to the business which A acquired from B, for the period following that in which the acquisition occurred, *SUP 20.2.1R* applies to A, in relation to that following period, as if the acquisition had occurred immediately before the relevant valuation date.

Annex 1R, Part 2

Activity group (defined in Part 7)	Valuation date for tariff bases (defined in Part 7)	Fee payable (tariff bases defined in Part 7)	
...			
A.14 Corporate finance advisers	Relevant <i>approved persons</i> as at 31 December 2001.	<b>Minimum fee</b>	<b>Fee</b>
		Minimum fee	£1,300,000
		<b>No. of persons</b>	<b>Fee (£/person)</b>
		>0 - 1	0
		2	1,690 962
		3 - 4	1,522 866
		5 - 10	1,369 779
11 - 100	1,233 702		
101 - 200	862 491		
> 200	517 294		
...			

Annex 1R, Part 4

**Part 4 - Fee tariffs applicable to firms with new or extended permissions**

**6 Table**

The provisions of Part 2 apply, except that the amount payable for each additional activity group is the greater of:

- (a) the minimum fee specified for the activity group; or
- (b) the fee calculated in accordance with Part 2 for that activity group using (as applicable):
  - (i) the relevant information supplied by the *firm* to the *FSA* in the course of its application for the projected valuation of the first year of the business to which the tariff applies; or
  - (ii) the number of *approved persons* immediately after *Part IV* permission is given.



**PERIODIC FEES (2003/2004) INSTRUMENT 2003****Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 156 (General supplementary powers);
  - (2) section 157(1) (Guidance); and
  - (3) paragraph 17(1) of Schedule 1 (Fees).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 April 2003.

**Amendments to SUP**

- D. SUP is amended by inserting, as SUP 20 Annex 1R (2003-4), the provisions in the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Periodic Fees (2003/2004) Instrument 2003.

By order of the Board  
20 March 2003

## Annex

### Annex 1R

## Periodic fees payable in relation to the period from 1 April 2003 to 31 March 2004.

The activity groups and tariff bases applicable to Parts 1 to 5 are defined in Part 7.

### Part 1 – Date on which payment is required (see also GEN 3.3.1R) and payment methods

#### 1 Table

Every *firm* must pay its periodic fee for this period as follows:

- (a) every *firm* whose periodic fee for the previous financial year was equal to or more than £50,000 must pay as follows:

Date payable	Amount payable
30 April 2003	50% of the periodic fee payable for the previous financial year
1 September 2003	The periodic fee payable under SUP 20.2.2R(1) <i>less</i> any amount paid on 30 April 2003.

- (b) every *firm* whose periodic fee for the previous financial year was less than £50,000 must pay as follows:

Date payable	Amount payable
1 July 2003	The periodic fee payable under SUP 20.2.2R(1)

#### 2 Table

Every *firm* must pay using one of the following methods:

Payment Method	Additional Amount or Discount Applicable
Direct debit	Discount of £20
Credit transfer (BACS, CHAPS)	Discount of £10
Cheque	None
Switch	None
Credit card (Visa or Mastercard only)	Additional 2% of sum paid

### Part 2 – Fee tariffs

(This part will be made at a later date.)

### Part 3 – Permitted deductions

(This part will be made at a later date.)

### Part 4 – Fee tariffs applicable to firms with new or extended permissions

(This part will be made at a later date.)

### Part 5 – Modification of fee tariffs for incoming EEA firms and incoming Treaty firms

(This part will be made at a later date.)

### Part 6 – Transaction reporting fees

(This part will be made at a later date.)

### Part 7 – Activity groups and tariff bases

Activity group	Fee-payer falls in the activity group if	Tariff-base
<b>A.1 Deposit acceptors</b>	its <i>permission</i> includes <i>accepting deposits</i> or <i>issuing e-money</i> ;  <b>BUT DOES NOT</b> include any of the following: <ul style="list-style-type: none"> <li>• <i>effecting contracts of insurance</i>;</li> <li>• <i>carrying out contracts of insurance</i>.</li> </ul>	(This part will be made at a later date.)
<b>A.2</b>	<b>This activity group does not apply for this period.</b>	
<b>A.3 Firms conducting insurance activities subject only to prudential regulation</b>	its <i>permission</i> includes one or more of the following: <ul style="list-style-type: none"> <li>• <i>effecting contracts of insurance</i>;</li> <li>• <i>carrying out contracts of insurance</i>;</li> </ul> <b>BUT ONLY</b> in respect of <i>specified investments</i> that are: - <i>general insurance contracts</i> ; or - <i>long-term insurance contracts</i> other than <i>life-policies</i> .	(This part will be made at a later date.)
<b>A.4 Firms conducting insurance activities subject to both prudential and conduct of business regulation</b>	its <i>permission</i> includes one or more of: <ul style="list-style-type: none"> <li>• <i>effecting contracts of insurance</i>;</li> <li>• <i>carrying out contracts of insurance</i>;</li> </ul> <b>both in</b> respect of <i>specified investments</i> including <i>life policies</i> ; <ul style="list-style-type: none"> <li>• <i>entering as provider into a funeral plan contract</i>.</li> </ul>	(This part will be made at a later date.)
<b>A.5 Managing agents at Lloyd's</b>	its <i>permission</i> includes <i>managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's</i> .	(This part will be made at a later date.)
<b>A.6 The Society of Lloyd's</b>	it is the <i>Society of Lloyd's</i> .	(This part will be made at a later date.)

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>GENERALLY, FOR FEE-BOCKS A.7 TO A.15 BELOW, ONLY THOSE REGULATED ACTIVITIES THAT ARE NOT LIMITED TO NON-MAINSTREAM REGULATED ACTIVITIES SHOULD BE TAKEN INTO ACCOUNT IN DETERMINING WHICH FEE-BLOCK(S) FEE-PAYERS BELONG TO.</p> <p>HOWEVER, IN THE CASE THAT ALL THE REGULATED ACTIVITIES WITHIN A FIRM'S PERMISSION ARE LIMITED TO NON-MAINSTREAM REGULATED ACTIVITIES, THEN THAT FIRM SHALL BE ALLOCATED TO FEE-BLOCK A.13 ALONE.</p>		
<p><b>A.7 Fund Managers</b></p>	<p>its <i>permission</i> includes <i>managing investments</i>.</p> <p>This activity group is subdivided into three classes:</p> <ul style="list-style-type: none"> <li>– <b>Class A</b>, where the funds managed by the <i>firm</i> belong to one or more <i>occupational pension schemes</i>;</li> <li>– <b>Class B</b>, where: <ul style="list-style-type: none"> <li>(a) the <i>firm</i> is not a Class A firm; and</li> <li>(b) the <i>firm's permission</i> includes <b>NEITHER</b> of the following: <ul style="list-style-type: none"> <li>• <i>safeguarding and administering of investments (without arranging)</i>;</li> <li>• <i>arranging safeguarding and administration of assets</i>; and</li> </ul> </li> <li>(c) the <i>firm</i> <b>EITHER</b>: <ul style="list-style-type: none"> <li>• has a <i>requirement</i> that prohibits the <i>firm</i> from holding and/or controlling <i>client money</i>; <b>OR</b></li> <li>• if it does not have such a <i>requirement</i>, <b>only</b> holds/controls <i>client money</i> arising from an agreement under which <i>commission</i> is rebated to a <i>client</i>;</li> </ul> </li> </ul> <p>and</p> <ul style="list-style-type: none"> <li>– <b>Class C</b>, where the <i>firm</i> is not within Class A or Class B.</li> </ul> </li></ul>	<p>(This part will be made at a later date.)</p>
<p><b>A.8</b></p>	<p><b>This activity group does not apply for this period.</b></p>	

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p><b>A.9 Operators, trustees and depositaries of collective investment schemes</b></p>	<p>(1) <i>its permission:</i></p> <p>(a) includes one or more of the following:</p> <ul style="list-style-type: none"> <li>• <i>establishing, operating or winding up a regulated collective investment scheme;</i></li> <li>• <i>establishing, operating or winding up an unregulated collective investment scheme;</i></li> <li>• <i>acting as trustee of an authorised unit trust scheme;</i></li> <li>• <i>acting as the depositary or sole director of an open-ended investment company;</i></li> </ul> <p><b>AND</b></p> <p>(b) <b>PROVIDED</b> the <i>firm</i> is <b>NOT</b> one of the following:</p> <ul style="list-style-type: none"> <li>• <i>a corporate finance advisory firm;</i></li> <li>• <i>a firm in which the above activities are limited to carrying out corporate finance business;</i></li> <li>• <i>a venture capital firm;</i></li> </ul>	<p>(This part will be made at a later date.)</p>
<p><b>A.9 Operators, trustees and depositaries of collective investment schemes</b></p> <p><b>Continued...</b></p>	<p><b>OR</b></p> <p>(2) if the fee-payer has none of the <i>regulated activities</i> above within its <i>permission</i>, but <b>ALL</b> the remaining <i>regulated activities</i> in its <i>permission</i> are limited to carrying out trustee activities.</p>	

Activity group	Fee-payer falls in the activity group if	Tariff-base
<b>A.10 Firms dealing as principal</b>	<p>its <i>permission</i> includes <i>dealing in investments as principal</i>;</p> <p><b>BUT NOT</b> if one or more of the following apply:</p> <ul style="list-style-type: none"> <li>• the above activity is carried on exclusively in respect of <i>life policies</i>;</li> <li>• the <i>firm</i> is acting exclusively as a matched principal broker;</li> <li>• the above activity is limited either to acting as an operator of a <i>collective investment scheme</i>, or to carrying out trustee activities;</li> <li>• the <i>firm</i> is a <i>corporate finance advisory firm</i>;</li> <li>• the above activity is otherwise limited to carrying out <i>corporate finance business</i>.</li> <li>• the <i>firm</i> is subject to a <i>limitation</i> to the effect that the <i>firm</i>, in carrying on this <i>regulated activity</i>, is limited to entering into transactions in a manner which, if the <i>firm</i> was an <i>unauthorised person</i>, would come within article 16 of the <i>Regulated Activities Order</i> (Dealing in contractually based investments).</li> </ul>	(This part will be made at a later date.)

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p><b>A.11</b>  <b>Execution-only arrangers, dealers or brokers</b></p>	<p>its <i>permission</i>,</p> <p>(a) includes one or more of the following:</p> <ul style="list-style-type: none"> <li>• <i>dealing in investments as agent;</i></li> <li>• <i>arranging (bringing about) deals in investments;</i></li> <li>• <i>making arrangements with a view to transactions in investments;</i></li> <li>• <i>dealing as principal in investments where the activity is carried on exclusively in respect of life policies or where the firm acts as a matched principal broker;</i></li> </ul> <p>(b) <b>BUT NONE</b> of the following:</p> <ul style="list-style-type: none"> <li>• <i>effecting contracts of insurance;</i></li> <li>• <i>carrying out contracts of insurance;</i></li> <li>• <i>advising on investments (except pensions transfers and pension opt-outs);</i> or</li> <li>• <i>advising on pension transfers and pension opt-outs;</i> or</li> <li>• <i>accepting deposits;</i></li> </ul> <p><b>AND</b></p> <p>(c) <b>PROVIDED</b> the fee-payer is <b>NOT</b> any of the following:</p> <ul style="list-style-type: none"> <li>• <i>a corporate finance advisory firm;</i></li> <li>• <i>a firm for whom all of the applicable activities above are otherwise limited to carrying out corporate finance business;</i></li> <li>• <i>a firm whose activities are limited to carrying out venture capital business;</i></li> <li>• <i>a firm whose activities are limited to acting as an operator, depositary or trustee of a collective investment scheme, or trustee activities.</i></li> </ul>	<p>(This part will be made at a later date.)</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p><b>A.12 Advisory arrangers, dealers or brokers (holding or controlling client money and/or assets)</b></p>	<p>its <i>permission</i>,</p> <p>(a) includes one or more of the following:</p> <ul style="list-style-type: none"> <li>• <i>dealing in investments as agent;</i></li> <li>• <i>arranging (bringing about) deals in investments;</i></li> <li>• <i>making arrangements with a view to transactions in investments ;</i></li> <li>• <i>dealing as principal in investments where the activity is carried on as a matched principal broker;</i></li> </ul> <p><b>AND</b></p> <p>(b) <b>AT LEAST</b> one of the following:</p> <ul style="list-style-type: none"> <li>• <i>advising on investments (except pension transfers and pension opt-outs);</i></li> <li>• <i>advising on pension transfers and pension opt-outs;</i></li> <li>• <i>advising on syndicate participation at Lloyd’s;</i></li> </ul> <p>(c) <b>BUT NONE</b> of the following:</p> <ul style="list-style-type: none"> <li>• <i>effecting contracts of insurance;</i> or</li> <li>• <i>carrying out contracts of insurance.</i></li> </ul> <p><b>AND</b></p> <p>(d) <b>CAN HAVE</b> one or more of the following:</p> <ul style="list-style-type: none"> <li>• <i>safeguarding and administering of assets;</i></li> <li>• <i>arranging safeguarding and administration of assets;</i></li> <li>• the ability to hold and/or control <i>client money</i>: <ul style="list-style-type: none"> <li>- that is, there is no <i>requirement</i> which prohibits the <i>firm</i> from doing this;</li> <li>- and provided that the <i>client money</i> in question does not only arise from an agreement under which <i>commission</i> is rebated to a <i>client</i>;</li> </ul> </li> </ul> <p><b>AND</b></p> <p>(e) <b>PROVIDED</b> the fee-payer is NOT any of the following:</p> <ul style="list-style-type: none"> <li>• <i>a corporate finance advisory firm;</i></li> <li>• <i>a firm</i> for whom all of the applicable activities above are otherwise limited to carrying out <i>corporate finance business</i>;</li> <li>• <i>a firm</i> whose activities are limited to carrying out <i>venture capital business</i>;</li> <li>• <i>a firm</i> whose activities are limited to acting as an operator of a <i>collective investment scheme</i>;</li> <li>• <i>a firm</i> whose activities are limited to carrying out <i>trustee</i> activities.</li> </ul>	<p>(This part will be made at a later date.)</p>



Activity group	Fee-payer falls in the activity group if	Tariff-base
<p><b>A.13 Advisory arrangers, dealers or brokers (not holding or controlling client money and/or assets)</b></p>	<p>1. it is an <i>authorised professional firm</i> and <b>ALL</b> the <i>regulated activities</i> in its <i>permission</i> are limited to non-mainstream activities;</p> <p><b>OR</b></p> <p>2. its <i>permission</i> contains both:</p> <ul style="list-style-type: none"> <li>• <i>making arrangements with a view to transactions in investments</i>; and</li> <li>• <i>accepting deposits</i>.</li> </ul> <p><b>OR</b></p> <p>3. its <i>permission</i>:</p> <p>(a) includes one or more of the following:</p> <ul style="list-style-type: none"> <li>• <i>dealing in investments as agent</i>;</li> <li>• <i>arranging (bringing about) deals in investments</i>;</li> <li>• <i>making arrangements with a view to transactions in investments</i>;</li> <li>• <i>dealing as principal in investments</i> where the activity is carried on as a matched principal broker;</li> </ul> <p><b>AND</b></p> <p>(b) <b>AT LEAST</b> one of the following:</p> <ul style="list-style-type: none"> <li>• <i>advising on investments (except pension transfers and pension opt-outs)</i>;</li> <li>• <i>advising on pension transfers and pension opt-outs</i>;</li> <li>• <i>advising on syndicate participation at Lloyd's</i>;</li> </ul> <p>(c) <b>BUT NONE</b> of the following:</p> <ul style="list-style-type: none"> <li>• <i>effecting contracts of insurance</i>;</li> <li>• <i>carrying out contracts of insurance</i>;</li> <li>• <i>safeguarding and administration of assets</i>;</li> <li>• <i>arranging safeguarding and administration of assets</i>;</li> </ul> <p><b>AND</b></p> <p>(d) <b>MUST EITHER</b>:</p> <ul style="list-style-type: none"> <li>• have a <i>requirement</i> that prohibits the <i>firm</i> from holding and/or controlling <i>client money</i>; OR</li> <li>• if it does not have such a <i>requirement</i>, only holds/controls <i>client money</i> arising from an agreement under which <i>commission</i> is rebated to a <i>client</i>;</li> </ul> <p><b>AND</b></p>	<p>(This part will be made at a later date.)</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p><b>A.13 Advisory arrangers, dealers or brokers (not holding or controlling client money and/or assets)</b></p> <p>Continued...</p>	<p>(e) <b>PROVIDED</b> the fee-payer is <b>NOT</b> one of the following:</p> <ul style="list-style-type: none"> <li>• a <i>corporate finance advisory firm</i>;</li> <li>• a <i>firm</i> for whom all of the applicable activities above are otherwise limited to carrying out <i>corporate finance business</i>;</li> <li>• a <i>firm</i> whose activities are limited to acting as an operator of a <i>collective investment scheme</i>;</li> <li>• a <i>firm</i> whose activities are limited to carrying out <i>trustee</i> activities;</li> </ul> <p><b>OR</b></p> <p>4. its <i>permission</i>:</p> <p>(a) includes one or more of the following:</p> <ul style="list-style-type: none"> <li>• <i>advising on investments (except pension transfers and pension opt-outs)</i>;</li> <li>• <i>advising on pension transfers and pension opt-outs</i>;</li> <li>• <i>advising on syndicate participation at Lloyd's</i>;</li> </ul> <p>(b) <b>BUT MUST NOT</b> include:</p> <ul style="list-style-type: none"> <li>• <i>dealing in investments as agent</i>;</li> <li>• <i>arranging (bringing about) deals in investments</i>;</li> <li>• <i>making arrangements with a view to transactions in investments</i>;</li> <li>• <i>dealing as principal in investments</i> where the activity is carried on as a matched principal broker;</li> </ul> <p><b>AND</b></p> <p>(c) <b>PROVIDED</b> the fee-payer is <b>NOT</b> one of the following:</p> <ul style="list-style-type: none"> <li>• a <i>corporate finance advisory firm</i>;</li> <li>• a <i>firm</i> for whom all of the applicable activities above are otherwise limited to carrying out <i>corporate finance business</i>;</li> <li>• a <i>firm</i> whose activities are limited to carrying out <i>venture capital business</i>;</li> <li>• a <i>firm</i> whose activities are limited to acting as an operator of a <i>collective investment scheme</i>;</li> <li>• a <i>firm</i> whose activities are limited to acting carrying out <i>trustee</i> activities.</li> </ul>	

<b>Activity group</b>	<b>Fee-payer falls in the activity group if</b>	<b>Tariff-base</b>
<b>A.14 Corporate finance advisers</b>	the <i>firm</i> is carrying on <i>corporate finance business</i> .	(This part will be made at a later date.)
<b>A.15</b>	<b>This activity group does not apply for this period.</b>	
<b>A.16 Pensions review levy firms</b>	it was liable to pay the Pensions Levy to the <i>PIA</i> in 2001/2002.	(This part will be made at a later date.)
<b>A.17 Pensions review - SERPS adjustment firms</b>	it is subject to <i>PIA</i> rule 7.2.4 under the Designation of Pensions Review Provisions Instrument 2001.	(This part will be made at a later date.)
<b>B</b>	it has been designated as an operator of a prescribed market under the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001, SI 2001/996.	(This part will be made at a later date.)

**Part 8 – Periodic fees for certificates under article 54 of the Regulated Activities Order**

(This part will be made at a later date.)

**ENFORCEMENT MANUAL (UNFAIR CONTRACT TERMS)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

**Commencement**

- B. This instrument comes into force on 1 April 2003.

**Amendments to the Handbook**

- C. (1) The Enforcement manual is amended in accordance with Annex A to this instrument.
- (2) The Supervision manual, Decision making manual, Credit Unions sourcebook and the Glossary are amended in accordance with Annex B to this instrument.

**Citation**

- D. This instrument may be cited as the Enforcement Manual (Unfair Contract Terms) Instrument 2003.

By order of the Board  
20 March 2003

## Annex A

### Amendments to the Enforcement Manual

In this Annex underlining indicates new text and striking through indicates deleted text. Where an entire section is inserted, the place that it goes is indicated and the text is not underlined.

1.2.1 G The *FSA's* effective and proportionate use of its enforcement powers to enforce the requirements of the *Act*, the *rules*, the *Statements of Principle* and other relevant legislation (for example, the Criminal Justice Act 1993, ~~and~~ the *Money Laundering Regulations 1993* and the *Unfair Terms Regulations*) play an important role in the pursuit of its *regulatory objectives*.

...

1.2.2 G Schedule 1 to the *Act* (The Financial Services Authority) states that the *FSA* must maintain arrangements for enforcing provisions of, or made under, this *Act* (see paragraph 6(3) of Schedule 1). The Enforcement manual describes the *FSA's* policies and procedures for the exercise of the enforcement powers given to it by the *Act* and the *Unfair Terms Regulations*, as set out in *ENF 1 Annex 1G*. ...

...

1.2.6 G The Authorisation manual (*AUTH*), the Supervision manual (*SUP*), the Enforcement manual (*ENF*), and the Decision making manual (*DEC*) form the regulatory processes part of the *Handbook*:

...

- (4) *DEC* is principally concerned with and sets out, the *FSA's* decision making procedures for decisions that involve the issue of *statutory notices*. It also gives *guidance on the FSA's* procedures for using its powers under Part XXIV of the *Act* (*Insolvency orders*), Part XXV of the *Act* (*Injunctions and restitution*), Part XXVII of the *Act* (*Criminal Offences*) and the *Unfair Terms Regulations* (see *DEC 1.1.3G* and *DEC 4.6G*).

...

#### ENF 1 Annex 1

#### Table of powers referred to in the Enforcement manual

G

ENF

1 Table: G

1

This table gives the main location in the Enforcement manual where *guidance* appears on those powers referred to in the *Act*, in secondary legislation made under the *Act*, or the *Unfair Terms Regulations* and in other legislation listed below. In many instances the powers will be referred to in other locations.

ENF

2

Table: Powers referred to in the Enforcement manual

Subject	Part and section of the Act	Enforcement manual location
...		
<b>Directions against incoming ECA provider</b>		
Power to make a direction against an incoming ECA provider	ECD Regulations	ENF 19
<b><u>Unfair Terms Regulations</u></b>		
<u>Power to seek injunctions under the Unfair Terms Regulations</u>	N/A	<u>ENF 20 (Unfair terms in consumer contracts)</u>

...

6.1.2 G This chapter explains the *FSA*'s powers to apply to court for *injunctions* and gives *guidance* on how the *FSA* intends to use these powers. The *FSA*'s effective use of these powers will help it work towards its *regulatory objectives* of protecting *consumers*, maintaining confidence in the *financial system* and reducing *financial crime*. This chapter does not explain the use of the *FSA*'s power to seek *injunctions* under the *Unfair Terms Regulations*. This is explained in ENF 20 (Unfair terms in consumer contracts).

...

6.2.3 G ~~ENF 6.9 to ENF 6.10 give *guidance* on the circumstances in which the *FSA* may use its power to apply to court for an order under Regulation 12 of the Unfair Terms in Consumer Contracts Regulations 1999.~~  
[deleted]

...

~~6.9 — Injunctions under the Unfair Terms in Consumer Contracts Regulations 1999: the power-~~ [deleted]

This section is deleted in its entirety.

~~6.10 — Injunctions under the Unfair Terms in Consumer Contracts Regulations 1999 FSA policy [deleted]~~

This section is deleted in its entirety.

**After ENF 19, insert the following new chapter:**

**Chapter 20 Unfair terms in consumer contracts**

**20.1 Application and purpose**

20.1.1 G This chapter explains the *FSA*'s policy on how it will use its powers under the *Unfair Terms Regulations*.

20.1.2 G The *FSA* has agreed with the Office of Fair Trading that the *FSA* will consider the fairness within the meaning of the *Unfair Terms Regulations* of financial services contracts for carrying on:

- (1) any *regulated activity*;
- (2) general insurance, including broking;
- (3) lending, administration, advising and arranging in respect of mortgages where the lender takes a first legal charge over property in the United Kingdom and the property is at least 40% occupied by the borrower or by a member of his immediate family.

20.1.3 G The Office of Fair Trading will consider the fairness within the meaning of the *Unfair Terms Regulations* of other financial services contracts involving carrying on activities governed by the Consumer Credit Act 1974, including second charge mortgage loans, buy to let mortgages, and non-mortgage personal loans (including credit cards). Further, where the firm concerned is not a *firm* or an *appointed representative*, the Office of Fair Trading may take enforcement action under the *Unfair Terms Regulations* in respect of financial services contracts involving the carrying on of activities within ENF 20.1.2G (see ENF 20.4.6G (5) and (6)).

20.1.4 G This chapter therefore applies to:

- (1) *firms*;
- (2) *appointed representatives*; and

- (3) other *persons*, whether or not a *person* with *permission*, who are using, or recommending the use of contracts, for carrying on the activities set out in *ENF 20.1.2G*.

20.1.5 G This chapter uses 'firm' to refer to all *persons* covered by *ENF 20.1.4G*.

## **20.2 Introduction**

20.2.1 G This chapter contains *guidance* on the *FSA*'s formal powers under the *Unfair Terms Regulations*. This chapter does not contain comprehensive *guidance* on the Regulations, and the reader should refer to the Regulations themselves for further details.

20.2.2 G This chapter also gives *guidance* on the approach the *FSA* expects to take before considering whether to exercise its formal powers under the *Unfair Terms Regulations*.

20.2.3 G The *FSA* has powers as a qualifying body under the *Unfair Terms Regulations*. The Regulations are not made under the *Act*. However, the Regulations say that the *FSA*'s functions under the Regulations are treated as functions under the *Act*. This:

- (1) makes the *regulatory objectives* relevant to the formulation of policy governing the discharge of the *FSA*'s functions under the Regulations;
- (2) means that any complaints about the *FSA*'s activities under the Regulations can be referred to the *Complaints Commissioner*;
- (3) allows the *FSA* to make full use of its information disclosure powers;
- (4) allows the *FSA* to use its power to give *guidance*;
- (5) protects the *FSA* against liability in damages in respect of its activities under the Regulations; and
- (6) allows the *FSA* to raise fees to fund its activities under the Regulations.

20.2.4 G The *FSA* will publish on its Internet site details of cases that result, through either an undertaking by a firm or injunction obtained from the courts, in a change in the contract terms used by it. The name of the firm will be included. Additionally, the Office of Fair Trading publishes similar details of cases that it and other qualifying bodies have dealt with in accordance with their duties under regulation 15 of the *Unfair Terms Regulations*. The *FSA* may therefore pass such details of cases to the Office of Fair Trading for publication on the Office of Fair Trading Internet site.



## 20.3 The Unfair Terms Regulations

### Terms to which the Unfair Terms Regulations apply

- 20.3.1 G
- (1) The *Unfair Terms Regulations* apply, with certain exceptions, to terms in contracts concluded between a seller or supplier and a *consumer* which have not been individually negotiated.
  - (2) Terms cannot be reviewed for fairness within the meaning of the *Unfair Terms Regulations* if they are terms which reflect:
    - (a) mandatory statutory or regulatory provisions; or
    - (b) the provisions or principles of international conventions to which the *EEA States* or the European Community as a whole are party.
  - (3) Terms which are written in plain, intelligible language also cannot be reviewed for fairness within the meaning of the Regulations if they relate to the main subject matter of the contract or the adequacy of the price or remuneration, as against the goods or services supplied in exchange. However, the *FSA* can review terms concerning these matters for fairness within the meaning of the Regulations if they are not written in plain, intelligible language. The *FSA* does not consider that it is enough that a lawyer could understand the term for the term to be excluded from review for fairness within the meaning of the Regulations. The term must be plain and intelligible to the *consumer*.

### When is a term “unfair ” within the meaning of the Regulations?

- 20.3.2 G
- Terms to which the *Unfair Terms Regulations* apply are regarded as unfair if, contrary to the requirement of good faith, they cause a significant imbalance in the parties’ rights and obligations to the detriment of the *consumer*.

### The main powers of the courts and qualifying bodies under the Regulations

- 20.3.3 G
- (1) Regulation 12 of the *Unfair Terms Regulations* states that:

“(1) The [Office of Fair Trading ] or [...] any qualifying body may apply for an injunction (including an interim injunction) against any person appearing to them to be using, or recommending the use of an unfair term drawn up for general use in contracts concluded with consumers.

...

"(3) The court, on an application under this regulation, may grant an injunction on such terms as it thinks fit."

(2) The *FSA* is a qualifying body for the purposes of regulation 12.

20.3.4 G (1) In deciding whether to grant an *injunction*, the court will decide whether the term in question is unfair within the meaning of the *Unfair Terms Regulations* (see *ENF* 20.3.2.G).

(2) If the court were to grant an *injunction*, the seller or supplier or recommender would have to stop including the unfair term in contracts it concluded with *consumers* from the date of the *injunction*.

(3) If the seller or supplier or recommender fails to comply with the *injunction*, it will be in contempt of court.

20.3.5 G The *FSA* also has the power under regulation 13 of the *Unfair Terms Regulations* to require for certain purposes that the seller or supplier or recommender supply the *FSA* with certain information or documents relating to pre-formulated standard contracts.

20.3.6 G If the court finds that the term in question is unfair, the seller or supplier or recommender would also have to stop relying on the unfair term in existing contracts governed by the *Unfair Terms Regulations*. This is because regulation 8 of the Regulations provides that an unfair term is not binding on the *consumer*. To the extent that it is possible, the existing contracts would continue in effect without the unfair term.

## **20.4 The Unfair Terms Regulations: the FSA's role and policy**

20.4.1 G The *FSA* may consider the fairness of a contract within the meaning of the *Unfair Terms Regulations* following a complaint from a *consumer* or other person or on its own initiative if the contract is within its scope according to *ENF* 20.1.2 G.

20.4.2 G There are three main ways in which the *FSA* might receive a complaint from a *consumer* or other person. These are:

- (1) directly; or
- (2) from another qualifying body which considers that the *FSA* should deal with the complaint; or
- (3) from the Office of Fair Trading.

- 20.4.3 G
- (1) The principal way in which the *FSA* would act on its own initiative is to undertake a review of contracts in a particular area of business on its own initiative. This might involve investigating the contract terms used by several firms in a particular sector, rather than waiting for complaints regarding a particular firm.
  - (2) The *FSA* will, for example, consider launching such a review if multiple *consumer* contract complaints or other intelligence lead it to believe that under the *Unfair Terms Regulations* there may be a contractual issue of wider significance to firms and *consumers*.

20.4.4 G If, following either a complaint or an own-initiative review, the *FSA* considers that a term in a contract which is within its scope as described in *ENF* 20.1.2 G is unfair within the meaning of the *Unfair Terms Regulations*, it may challenge firms regarding their use of the term, as described in *ENF* 20.4.6 G.

#### **Interaction with the FSA's powers under the Act**

- 20.4.5 G
- (1) The *FSA* will consider using its functions under the *Unfair Terms Regulations* in the context of its wider regulatory powers under the *Act*.
  - (2) In some cases, it might be appropriate to use other powers to deal with issues identified under the *Unfair Terms Regulations*. The powers available to the *FSA* under the *Act* may vary depending on the *regulated activities*, if any, which the firm carries on (see *ENF* 20.1.2G). For example, the use of the unfair term might involve a breach of a *rule* in *COB*, and, if so, it would also be open to the *FSA* to address the issue as a *rule* breach.
  - (3) The *FSA* may, in some circumstances, consider treating the matter under its powers in the *Act* and under the *Unfair Terms Regulations*.
  - (4) The use of powers under the *Act* will not be possible in all cases in which a firm uses an unfair term. If the *FSA* is considering using an enforcement power under the *Act*, it will do so in accordance with the policy relating to that power as set out in *ENF*.

#### **FSA policy on obtaining injunctions**

- 20.4.6 G
- (1) If the *FSA* decides to address issues using its powers under the *Unfair Terms Regulations*, and the contract is within its scope as described in *ENF* 20.1.2 G, it will, unless the case is urgent, generally first write to a firm expressing its concerns about the

potential unfairness within the meaning of the *Unfair Terms Regulations* of a term or terms in its contract and inviting the firm's comments on those concerns. If the *FSA* remains of the view that the term is unfair within the meaning of the *Unfair Terms Regulations*, it will normally ask the firm to undertake to stop including the term in new contracts and stop relying on it in contracts which have been concluded.

- (2) If the firm either declines to give an undertaking described in (1), or gives such an undertaking and fails to follow it, the *FSA* will consider the need to apply to court for an *injunction* under regulation 12 of the *Unfair Terms Regulations*, described in *ENF 20.3.3 G*.
- (3) In determining whether to seek an *injunction* against a firm, the *FSA* will consider the full circumstances of each case. A number of factors may be relevant for this purpose. The following list is not exhaustive; not all of the factors may be relevant in a particular case, and there may be other factors that are relevant:
  - (a) whether the *FSA* is satisfied that the contract term which is the subject of the complaint may properly be regarded as unfair within the meaning of the *Unfair Terms Regulations*;
  - (b) the extent and nature of the detriment to *consumers* resulting from the term or the potential detriment which could result from the term;
  - (c) whether the firm has fully cooperated with the *FSA* in resolving the *FSA*'s concerns about the fairness of the particular contract term;
  - (d) the likelihood of success of an application for an *injunction*;
  - (e) the costs the *FSA* would incur in applying for and enforcing an *injunction* and the benefits that would result from that action; the *FSA* is more likely to be satisfied that an application is appropriate where an *injunction* would not only prevent the continued use of the particular contract term, but would also be likely to prevent the use or continued use of similar terms, or terms having the same effect, used or recommended by other firms concluding contracts with *consumers*.
- (4) In an urgent case, the *FSA* may seek a temporary *injunction*, to prevent the continued use of the term until the fairness of the term could be fully considered by the court. An urgent case is

one in which the *FSA* considers that the actual or potential detriment is so serious that urgent action is necessary. In deciding whether to apply for a temporary *injunction*, the *FSA* may take into account a number of factors, including one or more of the factors set out in (3). In such an urgent case, the *FSA* may seek a temporary *injunction* without consulting with the firm in the manner described in (1).

- (5) When the *FSA* considers that a case requires enforcement action under the *Unfair Terms Regulations*, it will take the enforcement action itself if the firm is a *firm* or an *appointed representative*.
- (6) Where the firm is not a *firm* or an *appointed representative* (see *ENF* 20.1.4G (3)), the *FSA* will pass the case to the Office of Fair Trading, with a recommendation that it take the enforcement action. The Office of Fair Trading may then decide whether or not to take enforcement action.

### **Risk management**

- 20.5.1 G
- (1) Where a firm has given an undertaking as described in *ENF* 20.4.6G (1), or a court has ruled the firm's term unfair, then the *FSA* considers it desirable that the firm should notify promptly clients with whom it has already concluded contracts of the effect on their contracts.
  - (2) The firm should also, as part of its risk management, consider the effect on its own business, including whether there are relevant risks requiring mitigation. This may involve the firm contacting existing customers in due course to request that they agree to an amended contract, though such amendments will themselves need to avoid unfairness within the meaning of the *Unfair Terms Regulations* and comply with the law of contract generally.
  - (3) As part of their risk management, firms that have not themselves given an undertaking or been subject to a court decision should remain alert to undertakings or court decisions concerning other firms, since these will be of potential value in indicating the likely attitude of the courts, the *FSA*, the Office of Fair Trading or other qualifying bodies to similar terms or terms with similar effects.

### **Redress**

- 20.6.1 G
- (1) The *FSA* does not have the power under the *Unfair Terms Regulations* to grant redress to *consumers* who have suffered loss as a result of an unfair term. *Consumers* may choose to

complain to the firm and to seek redress from it. If the firm does not satisfy the *consumer's* complaint, the *consumer* may choose to refer the complaint to the *Financial Ombudsman Service*, if appropriate.

- (2) If the use of an unfair term also amounts to a *rule* breach (see *ENF 20.4.5G (2)*) and that breach causes loss to *consumers*, the *FSA* can apply to court for restitution or require restitution. The *FSA* will consider whether to use these powers in accordance with the policy in *ENF 9* (Restitution and redress).

## Annex B

### Amendments to other parts of the Handbook

In this Annex underlining indicates new text and striking through indicates deleted text.

#### Amendments to the Supervision manual

*SUP 2.1.4 G* The *FSA* receives information in *SUP 2.1.3G* through a variety of means, including notifications by *firms* (see *SUP 15*) and regular reporting by *firms* (see *Sup 16*). This chapter is concerned with the methods of information gathering that the *FSA* may use on its own initiative in the discharge of its functions under the *Act*. This chapter does not deal with the information gathering powers that the *FSA* has under the *Unfair Terms Regulations*. These are dealt with in *ENF 20.3.5G*.

#### Amendments to the Decision making manual

*DEC 1.1.1 G* This manual gives *guidance* on the *FSA*'s decision making and other procedures for giving *statutory notices* listed in *DEC 2 Ann 1G* and *DEC 3 Ann 1G*. This manual also gives *guidance* on the *FSA*'s procedure for using its powers under Part XXIV of the *Act* (Insolvency), Part XXV of the *Act* (Injunctions and restitution), ~~and~~ Part XXVII of the *Act* (Criminal Offences) and the *Unfair Terms Regulations*. ...

#### Amendments to the Credit Union sourcebook

*CRED 15.2.1 G* The *FSA*'s investigation and enforcement powers in the Industrial and Provident Societies Act 1965, the Friendly and Industrial and Provident Societies Act 1968 and the Credit Unions Act 1979, although its main powers derive from the *Act* and the *Unfair Terms Regulations*.

*CRED 15.2.2 G* For ease of reference:

...

- (2) Annex 2 to this chapter (*CRED 15 Ann 1G*) contains a table of the main relevant investigation and enforcement powers under the *Act* and the *Unfair Terms Regulations*, showing where they are considered in the Enforcement manual (*ENF*).

...

## Credit unions

### CRED 15 Annex 2

#### Enforcement Powers

G

CRED

1 Table: G

This table gives the main location in the Enforcement manual where *guidance* appears on the powers referred to in the *Act* and the *Unfair Terms Regulations* list below.

This is an edited version of the table given at *ENF* 1 Annex 1 G

CRED

2 Table: Table of Powers referred to in the Enforcement manual

Subject	Part and section of the Act	Enforcement manual location
PROSECUTION OF CRIMINAL OFFENCES		
Power to prosecute offences under the <i>Act</i> and subordinate legislation	Part XXVII, s. 401	<i>ENF</i> 15
Power to prosecute other offences	Part XXVII, s. 402	<i>ENF</i> 15
<b><u>UNFAIR TERMS REGULATIONS</u></b>		
Power to seek injunctions under the <i>Unfair Terms Regulations</i>	N/A	<i>ENF</i> 20 ( <u>Unfair terms in consumer contracts</u> )

### Amendments to the Glossary

Insert the following new definition in the appropriate alphabetical position:

*Unfair Terms Regulations* the Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083), as amended by SI 2001/1186 and SI 2001/3649.

Amend the following definition as shown:



<i>consumer</i>	<p>(1) (in relation to the <i>FSA's</i> power to make general <i>rules</i> (section 138 of the <i>Act</i> (General rule-making power)))...</p> <p>...</p> <p><u>(4) (in <i>ENF 20</i>) any natural person who, in contracts covered by the <i>Unfair Terms Regulations</i>, is acting for purposes which are outside his trade, business or profession.</u></p>
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**COMPLAINTS SOURCEBOOK  
(FINANCIAL OMBUDSMAN SERVICE GENERAL LEVY 2003/2004)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions of the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 138 (General rule making power);
  - (2) section 156 (General and supplementary powers);
  - (3) section 157(1) (Guidance); and
  - (4) section 234 (Funding).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 April 2003.

**Amendment of the Complaints sourcebook**

- D. The Complaints sourcebook (DISP) is amended:
- (1) in accordance with Annex A to this instrument; and
  - (2) by inserting, as DISP 5 Ann 1R (2003-4), the provisions in Annex B to this instrument.

**Citation**

- E. This instrument may be cited as the Complaints Sourcebook (Financial Ombudsman Service General Levy 2003/2004) Instrument 2003.

By order of the Board  
20 March 2003

## Annex A

### Amendments to the Complaints sourcebook (DISP)

In this Annex underlining indicates new text and striking through indicates deleted text.

1.1.7 R (1) A firm which does not conduct business with *eligible complainants* and has no reasonable likelihood of doing so is exempt from *DISP* 1.2 – *DISP* 1.7, if it notifies the *FSA* in writing of this fact and that notice remains current, with effect from the date that notice is received by the *FSA*.

(2) In (1), conducting business means carrying on any of the activities to which the rules in *DISP* 2.6 apply with or for persons who are eligible complainants under *DISP* 2.4.

1.1.7AG The meaning of conducting business is not limited to entering into new transactions with or for a person who is a customer. A firm which continues to service an existing customer (who is an eligible complainant) will be conducting business if the activity is one to which *DISP* 2.6 applies. For example, the firm may advise a customer to cash in an investment (see *DISP* 2.6.1R(1)), where advising on investments is a regulated activity.

...

1.1.10 R A firm which is exempt under *DISP* 1.1.7R must notify the *FSA* in writing if the conditions in *DISP* 1.1.7R no longer apply.

...

5.4.8A R A firm (A) must also pay a general levy which would have been payable by another firm (B) where:

(1) between 31 December and 31 March, A acquires all or part of the business of B whether by merger, acquisition of goodwill or otherwise; and

(2) B would have been liable to pay a general levy in the financial year immediately following the three month period specified in (1) in respect of the business acquired by A.

...

5.5.2AG A firm should not provide a statement of relevant business if it deals only with eligible complainants who are not private individuals. Relevant business is defined in the Glossary as business done with private individuals only. So *DISP* 5.5.1R does not apply in relation to

business done with other types of *eligible complainant* described in DISP 2.4.3R(1)(b), (c) and (d); the funding of FOS Ltd in relation to that business is by special case fee only (see DISP 5.6.6R).

...

- 5.10.2 G *Firms* which cease to be authorised and, therefore subject to the *Compulsory Jurisdiction* part way through the year will not, normally, receive a refund of their *general levy* (or *supplementary levy*) except in exceptional circumstances. ~~However, exceptions may be made if firms have informed the FSA of their plans before the end of the previous financial year.~~ *Firms* will continue to be liable for any case fees relating to *chargeable cases* closed by the *Financial Ombudsman Service* after they cease to be *authorised*. *Firms* will be charged the standard case fee where the complaint was closed by the *Financial Ombudsman Service* before the end of the year in which their *authorisation* ceased. The special case fee will apply to any complaint closed after the end of that year since the *firm* will no longer be contributing to the *general levy*.

## Annex B

### DISP 5 Ann1R

## DISP 5 Ann 1R: Annual Fees Payable in Relation to 2003/04

### Introduction: annual budget

- 1 The *annual budget* for 2003/04 approved by the *FSA* is £34.7m.

### Part 1: general levy and supplementary levy

- 2 The total amount expected to be raised through the *general levy* in 2003/04 will be £11.9m.

### Part 2: Fee tariffs for general levy and supplementary levy

- 3 No *establishment costs* will be raised in 2003/04 by the *supplementary levy*.
- 4 Table: *fee tariffs for industry blocks*

Industry block	Tariff base	General levy payable by firm
1-Deposit acceptors, mortgage lenders and administrators (excluding <i>firms</i> in block 14)	Number of accounts relevant to the activities in <i>DISP</i> 2.6.1R	£0.0125 per relevant account, subject to a minimum levy of £200
2- <i>Firms</i> that undertake insurance activities, subject to prudential regulation only (excluding <i>firms</i> in blocks 13 & 15)	Relevant annual gross premium income	£0.116 per £1,000 of relevant annual gross premium income, subject to a minimum levy of £200
3- <i>Society</i> of Lloyd's	To be allocated by the <i>Society</i>	£88,060 to be allocated by the <i>Society</i>
4- <i>Firms</i> that undertake insurance activities, subject to both prudential and conduct of business regulation ( <i>long-term</i> life <i>insurers</i> ) (excluding <i>firms</i> in block 15)	Relevant adjusted annual gross premium income	£0.092 per £1,000 of relevant adjusted annual gross premium income, subject to a minimum levy of £100

5-Fund managers (including those holding <i>client money/assets</i> and not holding <i>client money/assets</i> )	Relevant funds under management	£0.00187 per £1,000 of relevant funds under management, subject to a minimum levy of £100
6-Operators, trustees and depositaries of collective investment schemes	Flat fee	Levy of £75
7-Dealers as principal	Flat fee	Levy of £75
8-Advisory arrangers, dealers or brokers holding and controlling <i>client money</i> and/or assets	Number of relevant <i>approved persons</i> ( <i>controlled functions</i> 21, 22, 24, 25, 26)	£35 per relevant <i>approved person</i> ( <i>controlled functions</i> 21, 22, 24, 25, 26), subject to a minimum levy of £75
9-Advisory arrangers, dealers or brokers not holding and controlling <i>client money</i> and/or assets	Number of relevant <i>approved persons</i> ( <i>controlled functions</i> 21, 22, 24, 25, 26)	£20 per relevant <i>approved person</i> ( <i>controlled functions</i> 21, 22, 24, 25, 26), subject to a minimum levy of £75
10-Corporate finance advisers	Flat fee	Levy of £75
11-Execution-only arrangers, dealers or brokers	Flat fee	Levy of £75
12-	N/A for 2003/04	
13-Cash plan health providers	Flat fee	Levy of £50
14-Credit unions	Flat fee	Levy of £50
15-Friendly societies whose tax-exempt business represents 95% or more of their total relevant business	Flat fee	Levy of £50

- 5 The *industry blocks* in the table are the same as the equivalent activity groups set out in part 7 of SUP 20 Ann 1R.
- 6 Where the tariff base in the table is defined in similar terms as the tariff base for the equivalent activity group set out in part 7 of SUP 20 Ann 1R, it must be calculated in the same way as that tariff base except that it takes into account only the *firm's relevant business*.

**COMPENSATION SOURCEBOOK (MANAGEMENT EXPENSES LEVY  
LIMIT 2003/2004) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 213 (The compensation scheme);
  - (4) section 214 (General); and
  - (5) section 223 (Management expenses).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force immediately.

**Amendment to the Compensation sourcebook**

- D. The Compensation sourcebook is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Compensation Sourcebook (Management Expenses Levy Limit 2003/2004) Instrument 2003.

By order of the Board  
20 March 2003

## Annex

### Amendment to the Compensation sourcebook

In this Annex, underlining indicates new text.

#### COMP 13 Ann 1R: Management Expenses Levy Limit

1 This table belongs to *COMP* 13.5.2R

**2 Table**

Period	Limit on total of all management expenses levies attributable to that period (£)
1 December 2001 to 1 April 2002	£4,209,000
1 April 2002 to 31 March 2003	£13,228,000
<u>1 April 2003 to 31 March 2004</u>	<u>£13,319,000</u>



**CREDIT UNIONS SOURCEBOOK (AMENDMENT NO 4 AND  
CONSEQUENTIAL AMENDMENTS TO THE HANDBOOK) INSTRUMENT  
2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (the “Act”):
    - (a) section 138 (General rule-making powers);
    - (b) section 149 (Evidential provisions);
    - (c) section 156 (General supplementary powers);
    - (d) section 157(1) (Guidance); and
    - (e) section 210 (Statements of Policy); and
  - (2) article 15 (Record-keeping and reporting requirements relating to relevant complaints) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001 (SI 2001/2326).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 April 2003.

**Amendments to the Credit unions sourcebook**

- D. The Credit unions sourcebook is amended in accordance with Annex A to this instrument.

**Amendments to the Supervision manual**

- E. The Supervision manual is amended in accordance with Annex B to this instrument.

**Amendments to the Enforcement manual**

- F. The Enforcement manual is amended in accordance with Annex C to this instrument.

**Citation**

- G. This instrument may be cited as the Credit Unions Sourcebook (Amendment No 4 and Consequential Amendments to the Handbook) Instrument 2003.

By order of the Board  
20 March 2003

## Annex A

### Amendments to the Credit unions sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section of text is inserted, the place that it goes is indicated and it is not underlined.

*CRED* Transitional provisions

G

1 Table Transitional provisions

(1)	(2)	(3)	(4)	(5)	(6)
	<b>Material to which the transitional provision applies</b>		<b>Transitional provision</b>	<b>Transitional provision: dates in force</b>	<b>Handbook provision: coming into force</b>
<u>4</u>	<u><i>CRED</i> 17.6.5R</u>	<u>R</u>	<u>In the year ending 31 March 2003, the relevant period is from 1 October 2002 to 31 March 2003.</u>	<u>from 1 April 2003</u>	<u><i>credit unions day</i></u>

1.1.1 G (1) ... We believe that *CRED* contains enough information on what the *FSA* requires of *credit unions* to meet most of their day-to-day operational needs.

(2) Northern Ireland credit unions are not covered by the Handbook or by CRED. They are exempt from the general prohibition on carrying on a regulated activity, and do not need to be authorised persons. Their exemption is reflected in the definition of credit union in the Handbook and CRED: "a body corporate registered under the Industrial and Provident Societies Act 1965 as a credit union in accordance with the Credit Unions Act 1979, which is an authorised person" (see CRED 2.7.1G for an explanation of defined terms). Northern Ireland credit unions are registered under their own separate legislation, not under the Industrial and Provident Societies Act 1965 and the Credit Unions Act 1979. The Credit Unions Act 1979 permits the Treasury to make reciprocal arrangements with the appropriate authority in Northern Ireland for the law applicable to credit unions registered in Great Britain to be applied to credit unions registered in Northern Ireland, when the latter operate in Great Britain (and for the law applicable to credit unions registered in Northern Ireland to be applied to credit unions registered in Great Britain, when the latter operate in Northern Ireland). No such arrangements have yet been made.

...

## 2.9 Glossary of Definitions

2.9.1 G ~~In addition to the links between defined terms and definitions in the electronic versions of the Handbook, CRED has a Glossary of definitions. This that lists the defined terms used in CRED and gives their meaning. This is most easily accessed through the electronic version on CD-ROM or the FSA's website.~~

...

5.2.1 G (2) *Threshold condition 2: Location of offices. A credit union must have its head office and registered office in the United Kingdom. This general requirement in the Act is aimed at ensuring that firms are organised in a way that can be effectively supervised. The Credit Unions Act 1979 applies a specific requirement: the registered office of a credit union has to be in Great Britain; Northern Ireland credit unions are covered by separate legislation. (See CRED 1.1.1G(2) for the definition of the italicised term credit union).*

...

Maturity of investments

- 7.2.2 R Any *securities* invested in, or ....
- ...
- 7.2.6 G (1) A *credit union* may accept a loan ....
- (2) CRED 7.2.2R – CRED 7.2.3R apply to loans between *credit unions*, except for subordinated loans qualifying as capital under CRED 8.2.1R(4)(a). (See CRED 7.2.1R and CRED 8.2.5R(2)).
- (3) CRED 8.2.1R – CRED 8.2.6G apply to subordinated loans between *credit unions* qualifying as capital under CRED 8.2.1R(4)(a).
- (4) CRED 10 (Lending) (which covers loans to members) does not apply to loans between *credit unions* (see CRED 10.1.1R). However, in relation to such loans, *credit unions* should have regard to the principles outlined in CRED 10.4.6G and CRED 10.5 (Provisioning).
- ...
- 8.2.1 R (4) (a) the maturity of the loan must be ~~more~~not less than five years from the date on which the loan is made;
- ...
- ...
- 8.2.1A G The effect of CRED 8.2.1R(4)(a) is that the shortest permissible period for a subordinated loan qualifying as capital under CRED 8.2.1R(4)(a) is five years and one day.
- ...
- 8.2.5 R (1) When a *credit union* makes a subordinated loan to another *credit union* qualifying as capital under CRED 8.2.1R(4)(a), the full amount of the loan (not the amount counting towards the borrower's capital under CRED 8.2.4R) must be deducted from the lender's capital.
- (2) A subordinated loan within CRED 8.2.1R(4)(a) is not an investment under CRED 7.2.1R.

8.2.6 G The effect of CRED 8.2.5R is that the maturity limits in CRED 7.2.2R – CRED 7.2.3R do not apply to subordinated loans made by a credit union.

...

## Chapter 10 Lending to members

10.1 Application and purpose

10.1.1 R This chapter applies to all *credit unions* in relation to their lending to members under section 11 of the Credit Unions Act 1979 ~~carrying on lending activity.~~

10.1.2 G (1) This chapter seeks to protect ...  
(2) This chapter is not relevant to loans between credit unions, except as indicated in CRED 7.2.6G(4).

...

10.5.2 R (1) A *credit union* must make specific provision in its accounts for bad and doubtful debts of at least the amounts set out below:  
~~(1)(a)~~ 35% of the net liability to the *credit union* of borrowers where the amount is more than three *months* in arrears; and  
~~(2)(b)~~ 100% of the net liability to the *credit union* of borrowers where the amount is more than 12 *months* in arrears.

(2) The net liability of a borrower is the amount of his loan and interest outstanding, less his shareholding.

10.5.3 E (1) A *credit union* should maintain a general provision for bad and doubtful debts of at least 2% of the net liability to the credit union of borrowers not covered by the specific provisions in CRED 10.5.2R ~~its other loan assets.~~

(2) Contravention of CRED 10.5.3E(1) may be relied on as tending to establish contravention of CRED 10.5.1R.

10.5.4 G In order to comply with the requirements of *CRED* 10.5.1R 5 - *CRED* 10.5.3E it follows that it will be necessary for a *credit union* to review its provisioning requirements frequently. The *FSA* recommends (that this is; done at least quarterly ~~monthly~~).

...

10.5.6 G (1) *CRED* 10.5.2R requires a *credit union* to maintain minimum levels of specific provision. However, a *credit union* that only maintains the minimum levels does not necessarily comply with *CRED* 10.5.1R. This will depend on the assessment and judgment referred to in *CRED* 10.5.5G.

(2) (a) Failure to maintain a general provision of the level indicated in *CRED* 10.5.3E creates a presumption that the *credit union* is not complying with *CRED* 10.5.1R, though that presumption can be rebutted by the *credit union*: for example, it may be able to demonstrate that the occurrence of impaired loans that are either below the threshold for specific provision (that is, they are less than three *months* in arrears) or are unidentified at the time, is very low.

(b) If, on the other hand, a *credit union* does maintain the indicative level in *CRED* 10.5.3E, that does not necessarily mean that it complies with *CRED* 10.5.1R.

10.5.7 G If a *credit union* needs to make higher provisions, beyond the levels in *CRED* 10.5.2R and *CRED* 10.5.3E, in order to meet *CRED* 10.5.1R, then it should do so.

...

14.10.3 G In order to discharge its functions under the *Act*, the *FSA* needs timely and accurate information about *credit unions* on a regular basis. The provision of this information enables the *FSA* to build up over time a picture of *credit unions'* circumstances and behaviour.

...

14.10.4H G CRED 14.10.3G emphasises the importance to the FSA of timely and accurate information. The extension of a credit union's accounting period (as a result of a change of accounting reference date) to more than 15 months may hinder the timely provision of relevant and important information to the FSA, or its regularity. This is because some due dates for reporting to the FSA are linked to credit unions' accounting reference dates. If the extension of a credit union's accounting period appears likely to impair the effectiveness of the FSA's supervisory work, the FSA may take action to ensure that it continues to receive the information it requires on a timely basis. This may include the use of any of the tools of supervision set out in CRED 14.1.9G.

...

Financial penalties for late submission of reports

- 14.10.12 G (1) Financial penalties may be imposed for the late submission of:
- (a) the quarterly and annual returns referred to in CRED 14.10.5G and CRED 14.10.7G; and
  - (b) the audited accounts referred to in CRED 14.10.10R.
- (2) Details of the FSA's policy and procedures on financial penalties are given in CRED 15.5 (Financial penalties for late submission of reports) and CRED 15 Ann 3G.

...

- 17.6.3 R A credit union must provide the FSA, once a year on an annual basis, with a report in the format set out in CRED 17 Ann 1R (Credit union complaints return) which contains (for the relevant reporting period year ending 31 March) information about:
- (1) the total number of complaints received by the credit union (except those referred to in CRED 17.4.1R) broken down according to the categories and in respect of each of the generic product types described in CRED listed at DISP 17 Annex 1R (Credit union complaints return) which are relevant to the credit union; and
  - (2) the number of complaints closed by the credit union within:
    - (a) within eight weeks of receipt; and



- (b) more than eight weeks after receipt;
- (3) the total number of complaints outstanding at the end of the reporting period; and
- (4) the single contact within the *credit union* for complainants.

...

- 17.6.5 R For the purposes of *CRED 17.6.3R*:
- (1) the relevant reporting period is from 1 April to 31 March each year; and
  - (2) reports are to be submitted to the *FSA* within one *month* of the end of the relevant reporting period.

- 17.6.6 G (1) Financial penalties may be imposed for the late submission of the complaints report required by *CRED 17.6.3R*.~~[Deleted]~~
- (2) Details of the *FSA's* policy and procedures on financial penalties are given in *CRED 15.5* (Financial penalties for late submission of reports) and *CRED 15 Ann 3G*.

...

- 17.6.8 ~~The address to which reports should be sent is: The *FSA*, 25 The North Colonnade, Canary Wharf, London, E14 5HS~~ A report under this
- G section must be given or addressed, and delivered, in the way set out in *SUP 16.3.6R - SUP 16.3.16G* (General provisions on reporting) (see *CRED 14.10.4G – CRED 14.10.4FG*), except that:
- R
- (1) instead of the *credit union's* usual supervisory contact, the report should be given to or addressed for the attention of the Notification, Reporting and Data Maintenance department of the *FSA*; and
  - (2) in addition to the methods of submission of reports in *SUP 16.3.9R*, a *credit union* may submit a report under this section through, and in the electronic format specified in, the *FSA's* Complaints Reporting System.

17.6.8A     R    A credit union that has started but intends to stop submitting reports in electronic format under CRED 17.6.8R(2) must first notify the Notification, Reporting and Data Maintenance department of the FSA in writing of this intention.

17.6.8B     R    If a credit union is unable to submit a report in electronic format because of a systems failure of any kind, the credit union must:

(1) submit its report under this section through one of the alternative methods of submission of reports in SUP 16.3.9R (see CRED 14.10.4G); and

(2) notify the FSA, in writing and without delay, of that systems failure.

...

17.6.10     G    The contact point in CRED 17.6.3R and CRED 17.6.9R can be by name or job title and may include, for example, a telephone number.

...



(for FSA use only)

# Credit union complaints return

*FSA Handbook* Reference: CRED 17 Ann 1R  
This is the report referred to in CRED 17.6.3R

1 April 2003

Please read the notes on pages 7 and 8 before completing this return

## Firm details and reporting period Section 1

1.01 FSA firm reference number

1.02 Name of credit union

1.03 Reporting period From     To

## Nil return declaration Section 2

A Nil Return may only be declared where

- a) no complaints were received during the reporting period,
- AND
- b) no complaints were outstanding at the beginning of the period.

**SECTIONS 1, 3, 4 AND 9 MUST STILL BE COMPLETED.**

2.01 We wish to declare a Nil Return  
(Tick the box if applicable)  Nil return

**3.01** Who should the *FSA* contact at the *credit union* in relation to this return?

<b>a</b>	Forename	<input type="text"/>	
<b>b</b>	Surname	<input type="text"/>	
<b>c</b>	Title	<input type="text"/>	
<b>d</b>	Job title	<input type="text"/>	
<b>e</b>	Daytime telephone	<input type="text"/>	<input type="text"/>
<b>f</b>	Fax	<input type="text"/>	<input type="text"/>
<b>g</b>	E-mail	<input type="text"/>	

This information is required under *CRED 17.6.3R*. This information will be included in the public record and may be used by consumers to contact the *credit union*. The contact point may be a named individual, or a job title (see *CRED 17.6.10G*).

**4.01 Contact point for complaints**

<b>a</b>	Forename	<input type="text"/>	
<b>b</b>	Surname	<input type="text"/>	
	Title	<input type="text"/>	
<b>c</b>	Job title	<input type="text"/>	
<b>d</b>	Address of <i>credit union</i>	<small>Number</small>	<small>Street</small>
	Locality	<input type="text"/>	
	Town	<input type="text"/>	
	County	<input type="text"/>	
	Country	<input type="text"/>	
		<small>Postcode</small>	<input type="text"/>
<b>e</b>	Daytime telephone	<small>Area code</small>	<small>Number</small>
<b>f</b>	Fax	<input type="text"/>	
<b>g</b>	E-mail	<input type="text"/>	

PRODUCT TYPE	CATEGORY	Over-charging/ Incorrect charges	Delays	Other admin	Unsuitable/ Misleading advice	Failure to carry out instructions	Poor Customer Service	Misleading advertising/ product info	Disputes over sums/ amounts payable	Switching Churning	Breach of contract	Other	TOTAL
FSAVC													
Personal Pension													
Stakeholder Pension													
Mortgage Endowment													
Other Endowment													
Whole of Life													
Permanent Health													
Term Assurance													
PEP/ISA													
Unit Trust/OEIC													
Investment Bond													
Share/Derivative													
Current Account													
Deposit/Savings													
Loan Secured on Land													
Other Loans													
General Insurance	• Motor												
	• Property												
	• Other												
Other													

If no private individual complaints were received during the period, tick the box and go to Section 6

Grand Total

--

PRODUCT TYPE	CATEGORY	Over-charging/ Incorrect charges	Delays	Other admin	Unsuitable/ Misleading advice	Failure to carry out instructions	Poor Customer Service	Misleading advertising/ product info	Disputes over sums/ amounts payable	Switching Churning	Breach of contract	Other	TOTAL
FSAVC													
Personal Pension													
Stakeholder Pension													
Mortgage Endowment													
Other Endowment													
Whole of Life													
Permanent Health													
Term Assurance													
PEP/ISA													
Unit Trust/OEIC													
Investment Bond													
Share/Derivative													
Current Account													
Deposit/Savings													
Loan Secured on Land													
Other Loans													
General Insurance	• Motor												
	• Property												
	• Other												
Other													

If no small business complaints were received during the period, tick the box and go to Section 7

Grand Total

--

## Complaints closed during reporting period

## Section 7

7.01 Number of complaints closed

within 8 weeks

7.02 Number of complaints closed

after more than 8 weeks

## Complaints outstanding

## Section 8

8.01 Number of complaints outstanding as at reporting period **start** date

8.02 Number of complaints outstanding as at reporting period **end** date

## Declaration and signature

## Section 9

Knowingly or recklessly giving the *FSA* information which is false or misleading in a material particular may be a criminal offence (section 398 of the Financial Services and Markets Act 2000) and a breach of regulatory requirements.

In signing this form, the *credit union* acknowledges that the data supplied may be used by the *FSA* in a variety of different ways (including making it publicly available) in support of its principal functions and statutory objectives as provided for under the Financial Services and Markets Act.

**I confirm that I have read the notes and that the information given in this return about complaints received by the credit union named at Section 1.02 is accurate and complete to the best of my knowledge and belief.**

9.01 Name of *person* signing on behalf of the *credit union*

9.02 Job title

9.03 Signature

9.04 Date

	dd	mm	yyyy
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Address for postal submission of returns:

The Financial Services Authority  
P O Box 35747  
London E14 5WP  
United Kingdom

Website: <http://www.fsa.gov.uk>



## Notes on completion of this return

This return is the report referred to in *CRED 17.6.3R* and is to be used to notify the *FSA* of the total number of complaints received by a *credit union* during the reporting period. Only complaints subject to *CRED 17.5 – CRED 17.7* should be included in this return.

### Reporting period

The annual reporting period is generally from 1 April to 31 March (*CRED 17.6.5R*). However, in the year ending 31 March 2003, the relevant period is from 1 October 2002 to 31 March 2003. Returns must be submitted **within one month** of the end of the reporting period.

### Completing this return

The return must be completed in black ink and (if in manuscript) in BLOCK LETTERS.

All dates must be provided in numeric form (for example: 29/02/2002 for 29 February 2002).

Expressions in italics have the meaning given in the *Glossary* to the *FSA's Handbook* (or, if no meaning is given there, the expressions are to be interpreted in accordance with the related expression defined in the *Glossary*).

The *credit union* is responsible for the accuracy of the data and completion of the return.

### Section 2 – Nil Returns

If no complaints (except those referred to in *CRED 17.4.1R*) have been received during the reporting period, and no complaints were outstanding at the beginning of the period, the *credit union* may submit a **NIL RETURN** by ticking the relevant box on the front of the form. **Sections 1, 3, 4 and 9 must still be completed.**

### Section 4 – Complaints contact details

Details of a contact point for complainants must be provided in accordance with *CRED 17.6.3R* for inclusion in the public record. This must include at least a name, or a job title (position held), but need not include both.

### Section 5 – Private individual returns

Records of complaints as received from private individuals subject to *CRED 17.5 – CRED 17.7*. *Credit unions* should record all complaints received during the reporting period and apply the categorisation that best reflects the original complaint, even where the complaint has not been, or is unlikely to be, upheld by the *credit union*.

*DISP 2.4.3R* and *CRED 17.3.2G* provide further information on the definition of an *eligible complainant*.

Enter the number of complaints for each product according to the category of complaint. **Leave blanks where no complaints have been received.**

Enter a **total** for each product type for which you have received complaints and complete the **grand total** at the bottom of the page.

All *credit unions* provide the products “Deposit/Savings” (members’ shares) and “Other loans” (members’ loans not secured on land), and may receive complaints for those products. The corresponding rows in the form have been left shaded to help *credit unions* with completion; all other rows are clear. Some categories of complaint (shown in the column headings) may not apply to those products.

Some credit unions may also provide other products (for which they may require further permission). If so, they should enter the number of complaints received for these products in the relevant boxes, even though they are clear.

**If no private individual complaints have been received during the period, tick the box at the foot of the page and go to the next section.**

#### **Section 6 – Small business returns**

Since only private individuals may be members of a *credit union*, the circumstances in which a small business may be an *eligible complainant* under *DISP 2.4.3R* are likely to be extremely limited and rare (see *CRED 17.3.2G*). However, if any complaints subject to *CRED 17.5 – CRED 17.7* have been received from such a business, please submit the details in this section in the same format as in section 5.

**If no small business complaints have been received during the period, tick the box at the foot of the page and proceed to the next section.**

#### **Section 7 – Complaints closed during reporting period**

Indicate the number of complaints closed during the reporting period shown at Section 1.03 of this form. See *CRED 17.6.7R* for the rules governing when a complaint is considered to be closed.

#### **Section 8 – Complaints outstanding**

Give the numbers of complaints subject to *CRED 17.5 – CRED 17.7* outstanding at the **start** of the reporting period and the **end** of the reporting period.

#### **Section 9 – Declaration & signature**

The declaration must be signed by an appropriate individual for the *credit union*.

#### **Submitting this return**

Full details on the acceptable methods of submitting this form may be found in the *FSA Handbook* at *SUP 16.3* as modified by *CRED 17.6.8R*. Reports may be sent by post to the address below.

**If you have any questions or need help with this return, please approach your usual supervisory contact at the FSA.**

REPORTS SENT BY POST MUST BE ADDRESSED TO:

THE FINANCIAL SERVICES AUTHORITY  
P O BOX 35747  
LONDON E14 5WP  
UNITED KINGDOM

Hand delivered returns should be marked **for the attention of the NRDM Department** and be delivered to 25 The North Colonnade, Canary Wharf, London E14 5HS.

## CRED Appendix 2

### 2.1 Detailed contents of CRED

#### 2.1.1 Table

...

#### 7 Investment and borrowing

...

#### 7.2 Investment

...

#### 7.2.2 Maturity of investments

...

#### 10 Lending to members

...

#### 14 Supervision

...

#### 14.10 Reporting requirements

...

#### 14.10.12 Financial penalties for late submission of reports

...

#### 17 Complaints handling procedures for credit unions

...

#### Ann 1 Complaints report

...

## CRED Schedule 2

### Credit unions

#### Schedule 2

#### Notification requirements

...

<i>CRED</i> 17.6.6R	<u>Complaints report</u>	<u>Analysis Number of complaints received</u>	<u>Year ending 31 March each year</u>	<u>1 month after period end 30 April</u>
<u><i>CRED</i> 17.6.8R</u>	<u>Complaints report</u>	<u>Intention to stop submitting report in electronic format</u>	<u>When applicable</u>	<u>Immediately</u>

## Annex B

### Amendments to the Supervision manual

In this Annex, underlining indicates new text and striking through indicates deleted text.

16 Ann 15      G

GN/CQ          Guidance note for completion of credit union quarterly return (CQ)

4B              Total liabilities (including Reserves)

...

Credit union capital – page 2

...

Please note: "Negative reserves and any interim net losses must be deducted from capital"; (CRED 8.2.2R). "When a *credit union* makes a subordinated loan to another *credit union* qualifying as capital under CRED 8.2.1R(4)(a), the full amount of the loan (not the amount counting towards the borrower's capital under CRED 8.2.4R) must be deducted from the lender's capital" (CRED 8.2.5R(1)).

...

5D              Subordinated debt

Subordinated debts in 5D are loans ...

Some of the main conditions are listed below:

When the loan is issued it should have a maturity date of ~~more~~not less than five years;

The conditions attached to the loan should state that the claims of the subordinated creditors rank behind those of all unsubordinated creditors including the *credit union's* shareholders;

The subordinated debt should not become due and payable before its final maturity date agreed with the creditor (in writing) except in the event of default by non-payment of any interest or principal under the debt agreement or the winding-up of the *credit union*.

GN/CY          Guidance note for completion of credit union annual return (CY)

(2Q-R)          Subordinated debt

Subordinated debts in 2Q-R are loans ...

Some of the main conditions are listed below:

When the loan is issued it should have a maturity date of ~~more~~not less than five years;\_

The conditions attached to the loan should state that the claims of the subordinated creditors should rank behind those of all unsubordinated creditors including the *credit union's* shareholders;\_

The subordinated debt should not become due and payable before its final maturity date except in the event of default by non-payment of any interest or principal under the debt agreement or the winding-up of the *credit union*; ~~and~~\_

## Annex C

### Amendments to the Enforcement manual

In this Annex, underlining indicates new text.

- 13.5.1 G This section sets out the FSA's policy and procedures ...
- (8) CRED 14.10.10R (Audited accounts of credit unions) and CRED 17.6.3R to CRED 17.6.7R (Complaint handling procedures for credit unions).

**LLOYD'S SOURCEBOOK (AMENDMENT NO 2)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 138 (General rule-making power) of the Financial Services and Markets Act 2000 (the "Act").
- B. Section 138 of the Act is specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 April 2003.

**Amendments to the Lloyd's sourcebook**

- D. Chapter 15 of the Lloyd's sourcebook is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Lloyd's Sourcebook (Amendment No 2) Instrument 2003.

By order of the Board  
20 March 2003

**Annex**  
**Amendments to the Lloyd's sourcebook**

In this Annex, underlining indicates new text and striking through indicates deleted text.

**Chapter 15 Reporting by the Society**

15.10.2R The global account must be prepared and submitted to the *FSA* within six months of the end of the *financial year* and state that it is prepared in compliance with ~~LLD 9 to LLD 15~~ regulation 4 of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 1993 (SI 1993/3245).

**LLD 15 Annex 5R**

**R Auditors' Report (see LLD 15.9.3R)**

1 Table

1 The report required by *LLD 15.9.3R* must, in addition to any statement required by section 237(2) and (3) of the Companies Act, state:

...

(2) that according to the information and explanations that the auditors have received:

(a) in their opinion, the certificate required to be signed in accordance with *LLD 15.9.1R*(1), otherwise than in relation to statements to which paragraph 1(3) of this table relates, has been properly prepared in accordance with *LLD 9 to 15*; and

(b) subject to paragraph 1(3), it was or was not unreasonable for the persons giving the certificate to have made the statements in it (other than statements to which paragraph 1(3) relates); and

...



**APPLICATION FEES (UNAUTHORISED MUTUAL SOCIETIES  
REGISTRATION) (2003/2004) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 156 (General supplementary powers); and
  - (2) paragraph 17(1) of Schedule 1 (Fees).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 April 2003.

**Amendment to Unauthorised mutuals registration fees rules**

- D. The Unauthorised mutuals registration fees rules are amended by inserting, as Annex 1R (2003-4), the provisions in the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Application Fees (Unauthorised Mutual Societies Registration) (2003/2004) Instrument 2003.

By order of the Board  
20 March 2003

## Annex

### ANNEX 1R

#### FEES PAYABLE IN RELATION TO THE PERIOD FROM 1 APRIL 2003 TO 31 MARCH 2004

##### Periodic fee payable by registered societies (on 30 June 2003).

(This part will be made at a later date.)

##### Application fees payable to register a new society other than a credit union

Transaction	Amount Payable (£)
Application using <i>model rules</i> without any amendment to the model	100
Application using <i>model rules</i> with between 1 and 6 amendments to the model	120
Application using <i>model rules</i> with between 7 and 10 amendments to the model	350
Application using <i>model rules</i> with 11 or more amendments to the model, or using free draft rules	950

##### Periodic fee payable by sponsoring bodies (on 30 June 2003).

(This part will be made at a later date.)

##### Application fees payable by sponsoring bodies

(This fee is not payable by sponsoring bodies in respect of the model rules of credit unions.)

Transaction	Amount Payable (£)
Application for a new set of <i>model rules</i>	950

##### Methods of payment of periodic fees

(This part will be made at a later date.)

##### Method of payment of application fees

Payment Method	Additional amount or discount applicable
Cheque	None

**MARKET CONDUCT SOURCEBOOK  
(PRE-HEDGING CONVERTIBLE  
AND EXCHANGEABLE BOND ISSUES)  
INSTRUMENT 2003**

**Powers Exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

**Commencement**

- B. This instrument comes into force on 1 June 2003.

**Amendments to the Market conduct sourcebook**

- C. MAR 1 (The Code of Market Conduct) is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Market Conduct Sourcebook (Pre-hedging Convertible and Exchangeable Bond Issues) Instrument 2003.

By order of the Board  
17 April 2003

## Annex

### Amendments to the Market conduct sourcebook

#### The Code of Market Conduct

Annex 3G: Insert after Table 2 the following new table:

3 Table

#### Pre-hedging convertible and exchangeable bond issues

##### Application

1. This *guidance* is relevant to *persons* who manage convertible and exchangeable bond issues and *persons* who issue, sell or purchase convertible and exchangeable bonds. The *guidance* details the *FSA's* views about the application of the *market abuse regime* to the current market practices employed when pre-hedging such issues.

##### Summary

2. In brief, this *guidance* states that for convertible and exchangeable bonds whose launch is required to be disclosed to the market, *dealing* or *arranging* in the underlying *shares* or related products, before disclosure to the market and while in possession of information about the launch, is likely to amount to *market abuse*. For example, it is likely to be *market abuse* for a *person*, who possesses information about a disclosable convertible or exchangeable bond launch, to sell the underlying *shares* short before the announcement of the launch, with a view to facilitating the purchase of the underlying *shares* after the announcement.
3. However, there are circumstances where the *FSA* believes the *regular user* is likely to view certain pre-hedging activity as acceptable, and these are noted in paragraphs 18 to 21 (Pre-arranging to borrow shares from the issuer) and 23 to 26 (Exchangeable bond issues) of this annex.

## Meaning of “convertible and exchangeable bonds”

4. There are many different types of convertible and exchangeable bonds; but this *guidance* uses the following definitions:

(1) convertible bonds are bonds issued by a *company* for the purpose of raising capital and are convertible into the *company’s* own *shares*; the *company* issues new *shares* in time for the conversion; invariably the new *shares* will be fungible with existing *shares*;

(2) exchangeable bonds are bonds issued by a *company* and are convertible into a third party’s *shares*; in this case, the issuer normally has an existing holding in the underlying *shares* and is disposing of a substantial shareholding.

## Detailed guidance

5. For *behaviour* to amount to *market abuse*, the conditions set out in sections 118(1)(a), (b) and (c) of the *Act* must be satisfied (as described in *MAR* 1.1.3G).

## Behaviour in relation to a qualifying investment

6. Under section 118(1)(a), *behaviour* must occur in relation to a *qualifying investment* traded on a *prescribed market* (see *MAR* 1.11.2G for a list of these *prescribed markets*). As explained in *MAR* 1.11.6E, section 118(6) provides non-exhaustive guidance on what will amount to *behaviour* in relation to a *qualifying investment*. In particular, *behaviour* can occur in relation to a *qualifying investment* traded on a *prescribed market* where the *behaviour* is not in a *qualifying investment*. This is because such *behaviour* can nevertheless have a damaging effect on *prescribed markets*. This includes *behaviour* in *relevant products* as discussed in *MAR* 1.11.9E.

7. Consequently, for *behaviour* in relation to the issue of a convertible or exchangeable bond to come within the scope of the *market abuse regime*, it is necessary that:

(1) the underlying *shares* into which the bond can be converted are traded on a *prescribed market* and therefore the convertible or exchangeable bond is a *relevant product*; or

(2) the convertible or exchangeable bond is traded on a *prescribed market*.

### **Behaviour which amounts to misuse of information**

8. Under section 118(1)(b) of the *Act* one or more of the conditions in section 118(2) have to be met in order for *behaviour* to amount to *market abuse* (see *MAR* 1.1.3G). *MAR* 1.4.4E discusses the condition in section 118(2)(a) (referred to here as “misuse of information”). *MAR* 1.4.4.E states that *behaviour* will amount to *market abuse* in that it will be a misuse of information where all the circumstances in *MAR* 1.4.4E(1) to *MAR* 1.4.4E(4) are present.
9. *MAR* 1.4.4E(1) applies only where a *person deals* or *arranges deals*. In using these defined terms, *MAR* 1.4.4E(1) has a broad compass, since the *Glossary* definitions of *dealing* and *arranging* both have an extended meaning. *Dealing*, for instance, relates to the activity of dealing as described in paragraph 2 of Schedule 2 to the *Act*, and thus does not include the various exceptions that would have applied had the term been defined by reference to the *Regulated Activities Order*. Further, *arranging* covers not only *arranging (bringing about) deals in investments* within article 25(1) of the *Regulated Activities Order* and *making arrangements with a view to transactions in investments* within article 25(2) of the *Regulated Activities Order*, but *agreeing to carry on either of those activities* within article 64 of the *Regulated Activities Order*. Accordingly, the following *behaviour*, in particular in relation to convertible or exchangeable bonds, falls within one or other of the *Glossary* definitions of *dealing* and *arranging*:

(1) selling the underlying *shares* short;

(2) entering into a *derivative* transaction to sell the *shares*;

(3) borrowing the underlying *shares*;

- (4) entering into some types of credit *derivatives* in relation to the convertible or exchangeable bond.
10. The following *behaviour* in relation to convertible or exchangeable bonds will also fall within one or other of the *Glossary* definitions of *dealing* or *arranging*:
- (1) icing (that is, locating and reserving *shares* from prospective lenders) the underlying *shares* on a formal basis such that the arrangements are contractual in nature and so binding on the parties, such as ‘pay to hold’ arrangements; since the borrowing of stock involves a transaction of sale and purchase, this applies whether the formal, contractual, icing is with a view to subsequent borrowing by the *person* icing the *shares* or is for borrowing by a third party;
- (2) informal, non-contractual, icing arrangements, for example, where the icing of the underlying *shares* involves the informal reservation of the *shares*, the terms not being offered or agreed until after the disclosure to the market; in this case, however, the definitions cover the case only where the icing is undertaken on behalf of a third party.
11. Where icing arrangements are informal and non-contractual in nature, and are with a view to subsequent borrowing for the *person* icing the *shares*, they will fall outside both the definition of *dealing* and that of *arranging*. This would be because the fact that the entity making the icing arrangements is to become a principal to the stock loan means that there would be no agreement to borrow (in other words *deal*) within paragraph 2 of Schedule 2 to the *Act* and, in relation to *arranging*, the exclusion in article 28 of the *Regulated Activities Order* would apply. However, even if such icing does not come within the circumstances outlined in *MAR* 1.4.4E(1), it will still fall within section 118(1)(b) of the *Act* and the *market abuse regime*. *MAR* 1.4.4E does not operate to exclude from the *market abuse regime* all *behaviour* falling outside the circumstances outlined in *MAR* 1.4.4E (see section 122(2) of the *Act* and *MAR* 1.2.13G). For this reason, the *guidance* that is provided in this annex on the application of the remaining elements in section 118(2)(b) and the *regular user* test in section 118(1)(c) will also apply to icing that is outside the *Glossary* definitions of *dealing* and *arranging* and thus not covered by *MAR* 1.4.4E(1).

12. This *guidance* concerns current market practice when pre-hedging the issue of convertible and exchangeable bonds. By definition, such pre-hedging (and its constituent activities) is *behaviour* “based on” the information that there is to be an issue of a convertible or exchangeable bond. Therefore, this aspect of *MAR 1.4.4E(1)* is satisfied.
13. *MAR 1.4.4E(2)* states that the information must not be generally available. The information that a forthcoming convertible or exchangeable bond is going to be launched is not generally available before the launch (see *MAR 1.4.5E* which contains criteria for assessing whether information is generally available).
14. *MAR 1.4.4E(3)* states that the information must be *relevant information*. The knowledge that there is going to be a forthcoming issue of a convertible or exchangeable bond is *relevant information* for all *dealing* and *arranging* activity identified at paragraph 9 (see *MAR 1.4.9E* to *MAR 1.4.11E* which contain criteria for assessing when information is relevant).
15. However, if a *person* is speculating that an issue is imminent or trading on the basis of rumour, it would be acceptable to undertake *dealing* or *arranging* in the underlying *shares*, or in the securities of the issuer, provided the *person* is satisfied that he is basing his behaviour on information that is generally available, or that the information is not relevant.

### **Application of the regular user test**

16. *MAR 1.4.4E(4)* considers specific aspects of the *regular user* test in section 118(1)(c) of the *Act* in the context of the misuse of information. *MAR 1.4.4E(4)* requires the information to relate to matters which the *regular user* would reasonably expect to be disclosed to users of the particular *prescribed market*. If there is a legal or regulatory requirement to disclose the issue of the convertible or exchangeable bond to the market, the regular user would reasonably expect that no *dealing* or *arranging* should occur before this disclosure is made (see *MAR 1.4.12E* to *MAR 1.4.15E*). An exception to this may exist if the trading information safe harbour provided by *MAR 1.4.26C* applies, or in



the circumstances outlined in paragraphs 18 to 21 (Pre-arranging to borrow *shares* from the issuer) or 23 to 26 (Exchangeable bond issues).

17. Where there is no legal or regulatory requirement (such as that contained in the listing rules) to disclose the issue, current market practice is that there is no routine announcement of the issue. Therefore, in the absence of a legal or regulatory requirement to disclose the issue, the *regular user* would not reasonably expect the information to be disclosed.

### **Pre-arranging to borrow shares from the issuer**

18. The *regular user* may consider that it is acceptable *behaviour* for the manager of a convertible or exchangeable bond issue to arrange to borrow *shares* from the issuer or a related party of the issuer before the announcement of the launch of the issue. The *shares* held by the issuer or a related party are often not part of the lending market, and the issue manager may need to have access to the issuer's or a related party's pool of available *shares* in order to facilitate the transaction; for example, by meeting post-announcement hedging demand. Although there may be stock available in the market from other lenders, the need to pre-arrange to borrow the issuer's or a related party's *shares* may be critical to the success of the issue.
19. In determining that such *behaviour* is acceptable, the regular user is likely to view borrowing *shares* from the issuer or a related party as an acceptable practice in circumstances where:
  - (1) there is a genuine need to prearrange to borrow the *shares* to facilitate the issue;
  - (2) the parties to the pre-arranged borrowing are all aware of the forthcoming bond issue; and
  - (3) other market participants are not disadvantaged (see paragraphs 20 and 21).
20. There will be circumstances when the *regular user* is likely to regard borrowing from the issuer or a related party as unacceptable. An example would be if issuers or related

parties withdraw stock from the lending market in order to lend it to the issue manager in such a way that other market participants are disadvantaged.

21. For the issuer or a related party, when considering whether it is acceptable to make stock available to the issue manager, account needs to be taken not only of the extent to which stock will or may be lent to the issue manager, but also of the extent to which the stock has been available to the lending market. Factors which will be relevant in making this assessment are how recently and in what volume the stock to be lent to the issue manager has been available to the market. If the stock has been available to the lending market in some volume, and the amount that is to be lent to the issue manager will substantially reduce that volume, issuers or related parties need to be aware that withdrawing the stock may mean that they are engaging in *market abuse* by creating an abusive squeeze (*MAR 1.6.13E*).

### **Trading information safe harbour**

22. Under *MAR 1.4.26C*, *behaviour* will not amount to a misuse of information if it is based on information about a *person's* intention to *deal or arrange deals*. However, the protection of this safe harbour does not apply if the *dealing* or *arranging* is based on information relating to new offers, issues, placements or other primary market activity (see *MAR 1.4.26C(2)*). Convertible bond issues are likely to be primary market activity, as they invariably involve the issue of new *securities*, in the form of the bond, and may also involve the contemporaneous issue of new *shares*; if so, therefore, the protection of the safe harbour will not be available to these products.

### **Exchangeable bond issues**

23. Similarly, an exchangeable bond issue which has been the subject of an extensive marketing effort is likely to be part of the primary market, because it is itself a *security*, and therefore will also fall outside the protection of the safe harbour. It may be suggested that an exchangeable bond issue which is privately negotiated or structured has many of the characteristics of secondary market trades, and should therefore benefit from the trading information safe harbour in *MAR 1.4.26C*. However, since, as explained in

paragraph 22, the exchangeable bond involves the listing of new *securities*, even such an issue is likely to be considered as primary market activity.

24. Nonetheless, in determining whether there is an exposure to the *market abuse* regime taken as a whole, a distinction can be drawn between convertible or exchangeable bond issues that are the subject of a public marketing effort and consequently have an impact on a substantial number of market participants, and those exchangeable issues that are privately negotiated or structured transactions.
25. Factors which should be taken into account when drawing the distinction in paragraph 24 are:
  - (1) how widely distributed the issue is; and
  - (2) whether such transactions are routinely announced prior to completion (as opposed to purely ex-post disclosures, for example, under the listing rules).
26. Although the privately negotiated or structured transactions referred to in paragraphs 24 and 25 may not benefit from the trading information safe harbour, it is likely that the *regular user* would view pre-hedging of these issues by parties to the transaction as acceptable behaviour. Accordingly behaviour amounting to *dealing* or *arranging* as stated in paragraph 9 of this annex in connection with such exchangeable bond issues will not amount to *market abuse* because the *regular user* test in section 118 (1) (c) of the *Act* is not satisfied.

### **The application of *MAR 2* (Price stabilising rules)**

27. The *regular user* would expect relevant market participants to comply with the requirements for stabilising activity as set out in *MAR2* where these are applicable; they include the making of a public announcement of a new issue before undertaking any stabilising action.



**AUTHORISATION MANUAL (AMENDMENT NO 6)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

**Commencement**

- B. This instrument comes into force on 1 July 2003.

**Amendments to the Authorisation manual**

- C. The Authorisation manual is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Authorisation Manual (Amendment No 6) Instrument 2003.

By order of the Board  
15 May 2003

## Annex

### Amendments to the Authorisation manual

In this Annex, underlining indicates new text and striking through indicates deleted text. If an entire new section is inserted, the place that it goes is indicated and the text is not underlined.

1.6.7 G                      Once an applicant has determined that it needs to apply for *Part IV permission*, it should begin to gather the information needed for the formal application. At this stage, applicants are encouraged to begin discussion with the *FSA's* ~~Corporate Authorisation department~~ Enquiries and Applications Department (Applications team) about their plans and the application (see *AUTH* 1.9).

1.6.8 G                      The *FSA's* application pack (that is, the set of forms for an application for *Part IV permission*, and the notes for their completion) and *approved persons* forms are available from the *FSA* website or by contacting the ~~Corporate Authorisation department~~ Enquiries and Applications Department (Applications team) (see *AUTH* 1.9.2G).  
...

1.6.12 G                     After receiving the application pack, the *FSA* will begin its formal process of consideration. ...The *FSA* ~~Corporate Authorisation Applications and Individual Vetting and Registration~~ Individual Approvals teams will review the application pack and *approved persons* regime forms respectively. ...  
...

1.9.2 G                      Table: Who to contact at the FSA  
This table belongs to *AUTH* 1.9.1G

FSA dept	For advice on:	Contact details:
<del>Authorisation-Enquiries</del> <u>Enquiries and Applications Department (Authorisation Enquiries team)</u>	...	...  Telephone: 020 7676 4000-0082
<del>Corporate-Authorisation</del> <u>Enquiries and Applications</u>	...	1. <del>Corporate Authorisation</del> <u>Enquiries and Applications Department (Applications team)</u> The Financial Services

<u>Department (Applications team)</u>		Authority 25 The North Colonnade Canary Wharf London E14 5HS Telephone: 020 7676 4000-3954 ...
Passport Notification Unit	...	...
<del>Individual Vetting and Approval Enquiries and Applications Department (Individual Approvals team)</del>	...	<u>Individual Vetting and Approval Enquiries and Applications Department (Individual Approvals team)</u> ...

...

3.9.1 G All applicants for *Part IV permission* are encouraged to contact the ~~Corporate Authorisation department~~ Enquiries and Applications Department (Applications team) of the *FSA* to discuss their application before they send in an application form.

...

3.9.3 D (2) The application for *Part IV permission* must be :

(a) given to a member of, or addressed for the attention of, the ~~Corporate Authorisation department~~ Enquiries and Applications Department (Applications team); and

...

(3) The application may be delivered by :

(a) ...

...

(c) hand delivery to a member of the ~~Corporate Authorisation department~~ Enquiries and Applications Department (Applications team).

...

3.9.4 G (2) The application pack and accompanying guidance notes are available on [www.fsa.gov.uk](http://www.fsa.gov.uk) or from the ~~Corporate Authorisation department~~ Enquiries and Applications

Department (Applications team) of the FSA. To contact the ~~Corporate Authorisation department~~ Enquiries and Applications Department (Applications team):

(a) telephone on 020 7676 4000 3954; or

(b) write to the ~~Corporate Authorisation department~~ Enquiries and Applications Department (Applications team) at the address in *AUTH* 3.9.3D(4); or

...

...

3.9.12 G Applicants should be aware that there may be a delay. ... Applicants should discuss any problems with the ~~Corporate Authorisation department~~ Enquiries and Applications Department (Applications team) before submitting the application or, if necessary, consider seeking appropriate professional advice.

...

3.9.14 G While applicants will often wish to discuss applications with the ~~Corporate Authorisation department~~ Enquiries and Applications Department (Applications team) during the application process; similarly, the *FSA* will often need to discuss and clarify information that has been submitted within the application pack. The exchange of information during the application process is viewed as important by the *FSA*, since the final decision about an application needs to be based on as a complete a picture of the application as possible.

...

3.9.25 G (3) If *FSA* considers that it may be appropriate ... Applicants are advised to discuss any problems about commencing a *regulated activity* with the ~~Corporate Authorisation department~~ Enquiries and Applications Department (Applications team).

...

3.9.28 G In some cases, the *FSA* would be minded to grant an application ... Applicants are welcome to discuss with the ~~Corporate Authorisation department~~ Enquiries and Applications Department (Applications team) the circumstances in which the *FSA* may be prepared to determine an application subject to such conditions being met.

...

3.11.1 G Section 32 of the *Act* (Partnerships and unincorporated associations) treats all partnerships and unincorporated associations as if they were



legal persons for the purposes of the grant of *Part IV permission* (Scottish partnerships already have the status of a legal person as have limited liability partnerships). So, where a *partnership* or unincorporated association proposes to carry on a *regulated activity*, ~~So all partnerships or unincorporated associations should make an~~ the application for *Part IV permission* should be made in the name of the *partnership* or unincorporated association. However, a *partnership* should consider by whom the regulated activity will be carried on. If a *partner* carries on the *regulated activity* independently from the *partnership*, and not in his capacity as a *partner*, that *person* would need *authorisation* in his own right. The *person* may, for example, manage the assets of the partnership in his own name rather than in the name of the partnership. In such cases, the *authorisation* of the *partnership* itself would not, or may not, be necessary.

...

#### 3.11.4 G

Further guidance on the specific issues that arise for applicants that are limited partnerships under the Limited Partnerships Act 1907 or limited liability partnerships is in AUTH 3.22 (Specific issues: applicants that are limited partnerships under the Limited Partnerships Act 1907) and AUTH 3.23 (Specific issues: applicants that are limited liability partnerships).

...

#### 3.12.11 G

In determining the *classes* of *specified investments* for which *Part IV permission* is required, and those which may qualify to be written on an ancillary or supplementary basis, an applicant may need to take professional advice and may also wish to discuss this with a member of the ~~Corporate Authorisation department~~ Enquiries and Applications Department (Applications team).

...

#### 3.17.4 G

A *firm* which is subject to the rule in *CIS 6.5* may, however, carry on 'connected activities' referred to in *CIS 6.5*, which include management of *PEPs*, *ISAs* and *stakeholder pension schemes*, as long as they are dedicated to investments in unit trusts and *OEICs* for which the *firm* acts as manager or *ACD*. The ~~Corporate Authorisation department~~ Enquiries and Applications Department (Applications team) would be pleased to discuss any other activities which potential applicants consider may be connected.

...

#### 3.19.2 G

The application for *Part IV permission* for the new entity should be submitted to the ~~Corporate Authorisation department~~ Enquiries and Applications Department (Applications team) with details of the

*group* and any business the *group* proposes to transfer. Applicants should note that particular requirements apply to transfer of *insurance business*, or if the business includes *accepting deposits*.

3.19.3 G If applications for *Part IV permission* and for cancellation of *Part IV permission* (see *SUP 6*) have been submitted, then ~~Corporate Authorisation~~ the Enquiries and Applications Department (Applications team) will liaise with the lead supervisor, who will liaise with the *group* in respect of its applications. Although the *group* will need to obtain *Part IV permission* for the new entity first, the *FSA* will endeavour to process, if possible, the other applications at the same time.

...

3.20.2 G An applicant for *Part IV permission* that wishes, if the *FSA* grants the *permission*, to passport into another *EEA State* on, or shortly after, being given *permission*, is advised to contact the ~~Corporate Authorisation department~~ Enquiries and Applications Department (Applications team) to discuss its plans (see *AUTH 3.9.4G(2)* for contact details).

...

3.20.4 G An applicant may submit a separate *notice of intention* to passport (see ~~*SUP 13.6.4R*~~ *13.5.3R* and ~~*SUP 13.7.3R*~~ *13.5.4G*) with its application for *Part IV permission*. The *notice of intention* will be reviewed with the application for *Part IV permission*. The *FSA* is not, however, able to issue a *consent notice* (see ~~*SUP 13.6.10G*~~ *13.3.5G*), or send a *notice of intention* (see ~~*SUP 13.7.9G*~~ *13.4.4G*), to the relevant *Host State regulators* unless ~~or~~ and until an applicant is *authorised*. As a result, an applicant seeking to establish a *branch* in another *EEA State* will not be able to satisfy the conditions in the *Act* for establishing a *branch* (see ~~*SUP 13.6.2G*~~ *13.3.2G*) until after *authorisation*.

...

3.21.4 G These applications will be considered on a case by case basis. Applicants should contact the ~~Corporate Authorisation department~~ Enquiries and Applications Department (Applications team) at an early stage to discuss their plans.

...

After *AUTH 3.2*, insert the following new sections:

3.22 Specific issues: applicants that are limited partnerships under the Limited Partnerships Act 1907

3.22.1G Limited *partnerships* are formed under the Limited Partnerships Act 1907, which also governs aspects of their operation. A limited

*partnership* differs from a normal *partnership* in that not all the *partners* will be liable for all the debts and obligations of the *partnership*, though there must be at least one *partner* (the general *partner*) who is. The other *partners* (limited *partners*) are not permitted to be active in managing the day-to-day business of the limited *partnership* but may be involved only in its constitutional affairs (see section 6(1) of the Limited Partnerships Act 1907 (Modifications of general law in case of limited partnerships)).

### 3.22.2 G

Applications for *Part IV permission* should be in the name of the *partnership* (see *AUTH* 3.11.1 G and sections 32 (Partnerships and unincorporated associations) and 40(1)(c) (Application for permission) of the *Act*). This *permission*, if granted, will then cover the business to be carried on. *Authorisation* of the limited *partnership* will, in effect, authorise the *partners* when conducting the business of the *partnership*. However, if a *partner* conducts *regulated activities* separately from the limited *partnership*, this may trigger a need for the *partner* to seek *authorisation* independently. Thus, if the general *partner* seeks to manage the assets of the limited *partnership* by conducting business in his name (rather than as a *partner* in the name of the limited *partnership*), the general *partner* will need to be *authorised*. This is if the activities he carries on amount to *managing investments* or another *regulated activity*. In the case of a limited *partnership*, therefore, the *authorisation* of the *partnership* itself may not always be appropriate or sufficient. The key question is how and by whom the *regulated activities* will be carried on. So, the scope of the application will differ depending on which *regulated activities* the applicant wishes to undertake (see *AUTH* 3.22.3 G to *AUTH* 3.22.4 G).

### 3.22.3 G

The limited *partnership* may be set up to invest the funds of the *partners*, for example, in the way of a venture capital fund. If so, it will usually be a *collective investment scheme*. The *partnership* will not require *authorisation* simply for being a *collective investment scheme* as this is not a *regulated activity*. It will also often be the case that the *partnership*, in investing its assets, will be excluded from the *regulated activity* of *dealing in investments as principal* (see *AUTH* 2.8.4G (Dealing in investments as principal)). However, it is likely that the general *partner* will require *permission* from the *FSA* to *establish, operate or wind up a collective investment scheme* (see *AUTH* 3.17 (Specific obligations: applicants seeking to establish a collective investment scheme or to act as manager of a regulated collective investment scheme) and *CIS*). If the general *partner* delegates responsibility for operating a limited *partnership* that is a *collective investment scheme* to another *person* on behalf of the *partnership*, that other *person* will require *authorisation* from the *FSA* (whether or not the general *partner* also requires *authorisation*).

### 3.22.4 G

Where the limited *partnership* intends to manage the *investments* of third parties rather than the capital contributions of the *partners*, the

limited *partnership* itself may require *permission* from the *FSA*. This is because it is likely to be carrying on the *regulated activity* of *managing investments* and may be carrying on other *regulated activities* as well. A typical example of this kind of limited *partnership* would be a hedge fund scheme.

3.22.5 G If the limited *partnership* is a *collective investment scheme*, neither the limited *partnership* itself (if *authorised*) nor the general *partner* (if *authorised*) will be within the scope of the *ISD* in respect of its management of the scheme assets. So, neither of them will be an *ISD investment firm*. This is because the *ISD* specifically excludes from its scope collective investment undertakings and their managers and depositaries. This includes operators who manage both the scheme and its assets. However, where the management of the scheme and the assets are split, the activities of the asset manager will fall under the *ISD*.

3.23 Specific issues: applicants that are limited liability partnerships

3.23.1G A *limited liability partnership* is a *body corporate* incorporated under either the Limited Liability Partnerships Act 2000 or other legislation having the same effect as the Limited Liability Partnerships Act 2000. So, a *limited liability partnership* is a *body corporate* and exists as a legal *person* separate from its members. Any *limited liability partnership* that wishes to carry on a *regulated activity* must make its application for *Part IV permission* in its own name. Consequently, unlike partners in a *partnership*, the members of the *limited liability partnership* do not personally become *authorised*. So, the members do not have *permission* to conduct *regulated activities* in their own names. The *regulated activities* must be carried on by the *limited liability partnership* itself.

3.23.2 G A *limited liability partnership* has some features of a limited *company* and some of a *partnership*. For example, it can have the organisational flexibility of, and is subject to a taxation regime similar to that of, a *partnership*. However, although the *partners* of a general *partnership* are liable personally for the obligations of the *partnership*, a *limited liability partnership* (like a limited *company*) is a separate legal entity that is owned by its members. It is this structure that allows members to protect their personal assets from the liabilities of the *body corporate*.

3.23.3 G The organisational flexibility available to a *limited liability partnership* means that all of the members can be involved in the day-to-day management and operations of the business. This is so, even though they have limited their liability for the *limited liability partnership's* obligations. This may be contrasted with the position of limited *partners* in a limited *partnership*.

3.23.4 G A consequence of the organisational flexibility available to a *limited liability partnership* is the potential for widely differing organisational structures. This means that the proposed organisational structure for an applicant for *Part IV permission* will need to be explained fully in the application. This will allow the *FSA* to give proper consideration, with the applicant, to the way in which the *approved persons* and financial resource requirements will apply to it. All *limited liability partnerships* that are making an application for *Part IV permission*, whether or not they have been formed under the Limited Liability Partnerships Act 2000, will need to supply this information.

3.23.5 G *Authorised persons* wishing to exchange their existing status to that of a *limited liability partnership* will need to make an application for *Part IV permission* in the name of the new entity, and will be expected to complete an application pack for *Part IV permission*. A *firm* considering changing its existing status should contact the Enquiries and Applications Department (Applications team) (see *AUTH 1.9.2G*) at an early stage for advice on what will be required.

...

5.1.1 G (1) This chapter applies to an *EEA firm* that wishes to exercise an entitlement to establish a *branch* in, or provide *cross border services* into, the *United Kingdom* under a *Single Market Directive*. (The *Act* refers to such an entitlement as an *EEA right* and its exercise is referred to in the *Handbook* as "passporting"). (See *SUP App 3 (Guidance on passporting issues)* for further *guidance on passporting*).

...

...

5.3.9 D (2) The notice must be:

- (a) given to a member of, or addressed for the attention of, the ~~Corporate Authorisation department~~ Enquiries and Applications Department (Applications team); and
- (b) delivered to the *FSA* by one of the methods in (3).

(3) The notice may be delivered by:

- (a) *post* to the address in *AUTH 5.3.11G* below; or
- (b) leaving the application at the address in *AUTH 5.3.11G* below and obtaining a time-stamped receipt; or
- (c) hand delivery to a member of the ~~Corporate Authorisation department~~ Enquiries and Applications Department (Applications team).

5.3.10 G (1) The information pack required by *AUTH* 5.3.9D should be accompanied by confirmation of the *Treaty firm's* authorisation from the *Home State regulator*, as referred to in *AUTH* 5.3.5G(1).

(2) An information pack may be obtained from the ~~Corporate Authorisation department~~ Enquiries and Applications Department (Applications team).

5.3.11 G (1) To contact the ~~Corporate Authorisation department~~ Enquiries and Applications team (Applications team):

(a) telephone +44 (0) 20 7676 ~~4000~~ 3954, or fax on +44 (0) 20 7676 xxxx; or

(b) write to ~~Corporate Authorisation department~~ Enquiries and Applications Department (Applications team), The Financial Services Authority, 25 The North Colonnade, ...  
Canary Wharf, London E14 5HS; or

(c) email [corporate.authorisation@fsa.gov.uk](mailto:corporate.authorisation@fsa.gov.uk)

5.3.13 G (1) An *EEA firm* that is carrying on both direct insurance and reinsurance business will be entitled to *passport* under Schedule 3 to the *Act* in relation to the direct *insurance business*. It will also have a *Treaty right* under Schedule 4 to the *Act*. Such *EEA firms* are advised to discuss their particular circumstances with the ~~Corporate Authorisation department~~ Enquiries and Applications Department (Applications team) before sending in their notification under *AUTH* 5.5.3G.

(2) An insurance company with its head office in an *EEA state* other than the *United Kingdom* that is carrying on pure reinsurance business in that State, and which wishes to carry on such business in the *United Kingdom*, is advised to discuss its particular requirements with the ~~Corporate Authorisation department~~ Enquiries and Applications Department (Applications team). It may be entitled to exercise a *Treaty right* provided it satisfies the conditions in paragraph 3(1) of Schedule 4 to the *Act* (see *AUTH* 5.3.5G). Otherwise, it will have to seek a *Part IV permission* (see *AUTH* 3 (Applications for Part IV

... Permission)).

5.3.15 G A UCITS qualifier has *permission* under paragraph 2 of Schedule 5 to the *Act*, to carry on, as far as is appropriate to the capacity in which it acts in relation to the scheme:

- (1) ...
- (2) any activity in connection with, or for the purposes of, ~~that regulated activity~~ the scheme.

...

5.8.1 G For further information on UK regulation, an EEA firm, a Treaty firm or a UCITS qualifier should contact the ~~Authorisation Enquiries department~~ Enquiries and Applications Department (Authorisation Enquiries team) at the FSA. Questions about the passporting notification procedures can be addressed to the Passport Notification Unit.

- (1) To contact the Authorisation Enquiries ~~department~~ team:
  - (a) telephone +44 (0) 20 7676 4000 0082 or fax on +44 (0) 20 7676 9719;
  - (b) write to ~~Authorisation Enquiries department~~ Enquiries and Applications Department (Authorisation Enquiries team), The Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

...

...

## 5 Ann 3G

...

2 Table

<b>(1) Module of Handbook</b>	<b>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</b>	<b>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</b>
...		
<i>APER</i>	<i>APER</i> applies to <i>approved persons</i> ( <i>APER</i> 1.1.1G). See below under <i>SUP</i>	Not relevant because <i>SUP</i> 10 does not apply.

<b>(1) Module of Handbook</b>	<b>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</b>	<b>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</b>
	10 as to whether <i>controlled functions</i> are performed, and approval therefore required.	
<i>FIT</i>	<i>FIT</i> applies to <u>a every firm wishing to establish a branch in the United Kingdom or to apply for a top-up permission</u> in respect of any application that it makes for the approval of a <i>person</i> to perform a <i>controlled function</i> ( <i>FIT</i> 1.1). See under <i>SUP</i> 10 below as to whether such approval is required.	Not relevant because <del><i>SUP</i> 10 does not apply.</del> <u>Does not apply.</u>
... <i>IPRU(BANK)</i>	Only the following apply, and only if the <i>firm</i> is a <i>credit institution</i> other than an electronic money institution within the meaning of article 1(3)(a) of the <i>E-Money Directive</i> that has the right to benefit from the mutual recognition arrangements under the <i>Banking Consolidation Directive (IPRU(Bank) 3.2.1R)</i> :  (1)(a) <i>IPRU(BANK) 3.3.15R</i> , <i>IPRU(BANK) 3.3.16G</i> and <i>IPRU(BANK) 3.5.1R</i> ; and  (2)(b) chapter CO (which provides an overview of the underlying policy) and the more detailed <i>guidance</i> in chapters CB, CA, BC, BO, FX, CM, DU, TI, TE, TC, TL, TU, TS and TV.	Does not apply. But if the firm is a <i>credit institution</i> whose notification to the <i>FSA</i> of its intention to provide services in the <i>United Kingdom</i> covers services through a <i>branch</i> , see column (2).
... <i>IPRU(INV)</i>	<i>IPRU(INV)</i> does not apply unless the <i>firm</i> :	As column (2).



<b>(1) Module of Handbook</b>	<b>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</b>	<b>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</b>
	<p>(1) has a <i>top-up permission</i>;</p> <p>(2) is an <i>authorised professional firm, investment management firm, members' <del>agent</del> adviser, personal investment firm, securities and futures firm, service company or underwriting agent</i>; and</p> <p>(3) is not a <i>lead regulated firm or a media firm</i>.</p> <p>(IPRU(INV) 1.1.1R and 1.2R)</p>	
COB	<p>COB applies, except that COB 9 (<del>Customer</del> Client assets) does not apply with respect to the <i>firm's passported activities</i> (COB 1.2.1R(1)).</p>	<p>Where the activity:</p> <p>(1) <del>(a)</del> would fall within the <i>overseas persons</i> exclusions in article 72 of the <i>Regulated Activities Order</i>; or</p> <p>(2) <del>(b)</del> would not be regarded as carried on in the <i>United Kingdom</i>; or</p> <p>(3) <del>(c)</del> is not carried on with or for a <i>client</i> in the <i>United Kingdom</i>;</p> <p>then only the following apply:</p> <p>(4) <del>(d)</del> COB 3 (Financial promotion), but see the territorial scope in COB 3.3 (Where?);</p> <p>(5) <del>(e)</del> COB 5.5.7R and COB 5.5.8R (Overseas business); and</p> <p>(6) <del>(f)</del> COB 6.5, COB 6.7 and COB 6.8 (Content of key features, Cancellation and withdrawal, Insurance contracts – life and general)</p>



<b>(1) Module of Handbook</b>	<b>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</b>	<b>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</b>
	<p><b>SUP 4 (Actuaries)</b></p> <p><del>Applies only if the <i>firm</i> is a <i>long term insurer</i> (SUP 4.1).</del>  <u>Does not apply.</u></p> <p><b>SUP 7 (Individual requirements)</b></p> <p>Applies only if the <i>firm</i> has a <i>top-up permission</i>. It contains only <i>guidance</i> on the exercise of the <i>FSA's own initiative power</i> to vary that <i>permission</i>. The <i>FSA</i> has similar, but more limited, powers of intervention under Part XIII of the <i>Act</i> in relation to the <i>permission</i> of the <i>firm</i> under schedule 3 to the <i>Act</i> (see <i>ENF 54</i>).</p> <p>...</p> <p><b>SUP 17 (Transaction reporting)</b>  Does not apply in relation to the <i>firm's passported activities</i>. Otherwise, this chapter applies only if the <i>firm</i> is a <i>securities and futures firm</i>, a <i>personal investment firm</i> or an <i>ISD investment firm</i> (SUP 17.1.1R).</p> <p><b>SUP 18 (Transfers of business)</b>  <del>[To be completed when SUP 18 made]</del>  <u>SUP 18.4 does not apply. SUP 18.1, SUP 18.2 and SUP 18.3 may be relevant if the <i>firm</i> proposes to transfer the whole or part of its business by an <i>insurance business transfer scheme</i> or to accept such a transfer or proposes to accept certain transfers of <i>insurance</i></u></p>	<p><b>SUP 4 (Actuaries)</b></p> <p><del>As column (2).</del>  <u>Does not apply.</u></p> <p><b>SUP 7 (Individual requirements)</b></p> <p>As column (2).</p> <p><b>SUP 17 (Transaction reporting)</b>  Does not apply (SUP 17.1.1R(2)(a) and <del>SUP 17.1.3R(1)</del>).</p> <p><b>SUP 18 (Transfers of business)</b>  <del>[To be completed when SUP 18 made]</del>  <u>As column (2).</u></p>

<b>(1) Module of Handbook</b>	<b>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</b>	<b>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</b>
	<p><u>business taking place outside the United Kingdom.</u></p> <p><b>SUP 19 (Commodity Futures Trading Commission Part 30 Exemption)</b> This chapter may be relevant if the <i>firm</i> intends to trade on behalf of US customers on non-US futures and options exchanges.</p> <p><b>SUP 20 (Fees)</b> <del>[To be completed when SUP 20 made]</del> <u>Applies (SUP 20.1.1R) but modified (SUP 20.4.7G - SUP 20.4.10R).</u></p> <p><b>SUP App 1 (Prudential categories)</b> This may be relevant if the <i>firm</i> has a <u>top-up permission. Applies and provides guidance on the prudential categories used in the Handbook.</u></p> <p><b>SUP App 2 (Insurers: Scheme of operations)</b> Does not apply (<u>SUP App 2.1.1R</u>).</p>	<p><b>SUP 19 (Commodity Futures Trading Commission Part 30 Exemption) (Transfers of business)</b> Does not apply (<u>SUP 19.1.1G(2)</u>).</p> <p><b>SUP 20 (Fees)</b> <del>[To be completed when SUP 20 made]</del> <u>As column (2).</u></p> <p><b>SUP App 1 (Prudential categories)</b> <del>Does not apply.</del> <u>As column (2).</u></p> <p><b>SUP App 2 (Insurers: Scheme of operations)</b> Does not apply (<u>SUP App 2.1.1R</u>).</p>
<p>...</p> <p><i>DISP</i></p>	<p>Applies (<u>DISP 1.1.1R</u>).</p>	<p>Does not apply (<u>DISP 1.1.1R</u>).</p>
<p><i>COMP</i></p>	<p>Applies, except in relation to the <i>passported activities</i> of an <i>ISD investment firm</i> or a <del>BCD</del> <u>BCD credit institution</u> (see the definition of “<del>partieipatant</del> <u>participant firm</u>”) other than an electronic money institution within the meaning of article 1(3)(a) of the <i>E-Money Directive</i> that has the right to benefit from the mutual recognition arrangements under the</p>	<p>Does not apply in relation to the <i>passported activities</i> of an <i>ISD investment firm</i> or a <del>BCD</del> <u>BCD credit institution</u> (see the definition of “<u>participant firm</u>”). Otherwise <del>COMP</del> <u>COMP</u> may apply, but the coverage of the <i>compensation scheme</i> is limited for non-<del>UK</del> <u>UK</u> activities (see <i>COMP 5</i>).</p>

<b>(1) Module of Handbook</b>	<b>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</b>	<b>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</b>
	<i>Banking Consolidation Directive. However, <del>such a firm</del> an <i>ISD investment firm</i> or <i>BCD credit institution</i> may be able to apply for <i>top-up cover</i> in relation to its <i>passported activities</i> (see <del>comp</del> <u>COMP 14</u> (Participation by EEA Firms)).</i>	
... <i>CRED</i>	Does not apply.	Does not apply.
<u><i>ECO</i></u>	<u><i>ECO 2</i> applies if the <i>firm</i> is an <i>outgoing ECA provider</i>. <i>ECO 3</i> applies if the <i>firm</i> is a <i>domestic ECA provider</i>. <i>ECO 1</i> does not apply.</u>	<u><i>ECO 1</i> applies if the <i>firm</i> is an <i>incoming ECA provider</i>. <i>ECO 2</i> and <i>ECO 3</i> do not apply.</u>
<i>ELM</i>	<u>Only <i>ELM 6</i> and (in so far as it applies to the <i>rules</i> in <i>ELM 6</i>) <i>ELM 5.6.1R</i> apply.</u>	<u>Does not apply.</u>
<i>LLD</i>	Does not apply.	Does not apply.
<i>PROF</i>	<i>PROF</i> applies only if the <i>firm</i> is an <i>authorised professional firm</i> .	As column (2).
<del><i>LLD</i></del>	<del>Does not apply.</del>	<del>Does not apply.</del>
<i>REC</i>	Does not apply.	Does not apply.
<u><i>EMPS</i></u>	<u>Not relevant.</u>	<u>Not relevant.</u>
<u><i>FREN</i></u>	<u>Does not apply.</u>	<u>Does not apply.</u>

<b>(1) Module of Handbook</b>	<b>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</b>	<b>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</b>
<u>OMPS</u>	<u>Not relevant.</u>	<u>Not relevant.</u>
<u>SERV</u>	<u>Not relevant.</u>	<u>Not relevant.</u>
<u>ELM</u>	Only <u>ELM 6</u> and (in so far as it applies to the <u>rules in ELM 6</u> ) <u>ELM 5.6.1R</u> apply.	<u>Does not apply.</u>

...

6.4.2 G If the *firm* has questions unanswered by *AUTH 6* Annex 1G, it should contact the *FSA's Individual Vetting and Approval department Enquiries and Applications Department (Individual Approvals team)*:

- (1) telephone 020 7676 0019; or
- (2) write to:
  - Individual Vetting and Approval Enquiries and Applications Department (Individual Approvals team)
  - The Financial Services Authority
  - 25 The North Colonnade
  - Canary Wharf
  - London E14 5HS; or
- (3) email [iva@fsa.gov.uk](mailto:iva@fsa.gov.uk)

...

## 6 Ann 1G

### 1 Table Frequently asked questions

	Question:	Answer:
	Requirements of the regime	

1	When is <del>approval</del> <u>approval</u> required?	The Act requires that <del>approval</del> approval be obtained before a <i>person</i> performs a <i>controlled function</i> . See section 59 of the <i>Act</i> (Approval for particular arrangements).
...		
8	Who applies for <del>approval</del> approval?	It is the <i>firm</i> , which applies for approval. See section 60 of the <i>Act</i> (Applications for approval).

...

7.6.1 G            A *person* considering applying for a certificate should, before sending in any application, contact the ~~Authorisation Enquiries Department~~ Enquiries and Applications Department (Authorisation Enquiries team) of the *FSA* to discuss whether a certificate may be appropriate.

7.6.2 G            (1) An application should be made by the proprietor of the relevant publication or service using a form which can be obtained from the ~~Authorisation Enquiries Department~~ Enquiries and Applications Department (Authorisation Enquiries team) of the *FSA*. The form asks for general information about the applicant and gives guidance notes on completion and other details of how the *FSA* can help.

...

...

7.7.5 G            For further information contact the ~~Authorisation Enquiries Department~~ Enquiries and Applications Department (Authorisation Enquiries team) at the *FSA* (see *AUTH* 1.9.2G).

...

**ELECTRONIC REPORTING OF LARGE EXPOSURES  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 138 (General rule-making powers);
  - (2) section 156 (General supplementary powers); and
  - (3) section 157(1)(Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 July 2003.

**Amendments to the Supervision manual**

- D. The Supervision manual is amended in accordance with Annex A to this instrument.

**Amendments to the Interim Prudential sourcebook for banks**

- E. The Interim Prudential sourcebook for banks is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Electronic Reporting of Large Exposures Instrument 2003.

By order of the Board  
15 May 2003



## Annex A

### Amendments to the Supervision manual

In this Annex, underlining indicates new text and striking through indicates deleted text.

16.7.8R Table Financial reports from a UK bank (see *SUP* 16.7.7R)

Content of Report	Form (Note 1)	Frequency	Due date
...			
Analysis of large exposures (Unconsolidated, solo consolidated)	LE2_or <u>LE3</u> (Note 7)	Quarterly	10 <i>business days</i> after quarter end (Note 6) ( <u>14 business days if LE3 submitted electronically</u> )
Analysis of large exposures (Consolidated)	LE2_or <u>LE3</u> (Note 2) (Note 7)	Quarterly	20 <i>business days</i> after <del>period</del> <u>quarter</u> end (Note 6) ( <u>24 business days if LE3 submitted electronically</u> )
...			
<p>Note 1 = When giving the report required, a <i>bank</i> must use the form indicated, if any. The content of the form has the status of <i>guidance</i> on the type of information that should be provided to meet the reporting obligation. A copy of the form is located in <i>SUP</i> 16 Ann 1R.</p> <p style="text-align: center;">...</p>			

Note 7 = For quarter ends between December 2003 and June 2004, a *bank* must use either Form LE2 or Form LE3 except that, once a *bank* has used Form LE3, it must not subsequently use Form LE2. For quarter ends in or after September 2004, a *bank* must use Form LE3.

...

16.7.13R A *bank* must submit the reports described in SUP 16.7.8R, SUP 16.7.10R and SUP 16.7.12R to the following:

- (1) BSD3, LE3, LR, SLR1, B7 and M1 to: The Financial Statistics Division  
Domestic Banking Group (HO-4) Bank of England Threadneedle Street  
London EC2R 8AH;

...

16.7.15R A *bank* must submit the reports referred to in SUP 16.7.13R(1) either: ~~in the electronic format specified in the Bank of England Reporting System specification as at commencement~~, sent either:

- (1) on paper; or
- (2) in ~~the electronic format specified in~~ using the Bank of England Reporting System ~~specification as at commencement~~ and sent either;

...

...

Insert the new form below in SUP Ann 1R, after the Form LE2 and before the Form LR.

Private and confidential



## FORM LE3 - Analysis of Large Exposures

Reporting institution \_\_\_\_\_  
(Unconsolidated/Solo consolidated/ Consolidated - delete as appropriate)

Reporting date 

--	--	--

  
eg 31 12 2001

FSA Number \* 

--	--	--	--	--	--

Agreed LE capital base at the reporting date (000s) 

--

 Date agreed 

--

Lowest LE capital base in period (000s) 

--

Please tick if this return is completed in Euros..... 

--

Knowingly or recklessly giving the FSA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.1R and SUP 15.6.3R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FSA and to notify the FSA immediately if materially inaccurate information has been provided. SUP 16.3.10R requires an authorised person to submit reports containing all the information required. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the FSA. It should not be assumed that information is known to the FSA merely because it is in the public domain or has previously been disclosed to the FSA or another regulatory body. Any additional information of relevance should be provided by letter direct to the FSA.

I confirm that the information in this form is accurate and complete to the best of my knowledge and belief and that I have read the Guidance Notes to this form.

Signature of authorised signatory: \_\_\_\_\_ Date \_\_\_\_\_

Name: \_\_\_\_\_ Position held: \_\_\_\_\_

In the event of a query, the FSA or the Bank of England may, in the first instance, contact (block letters please)

Tel No \_\_\_\_\_ Ext \_\_\_\_\_

### Notes on Completion

- 1 Complete the return quarterly on an unconsolidated/solo-consolidated basis and consolidated basis as at end of March, June, September and December. Institutions wishing to report as at dates which coincide with the financial year end should apply to the FSA for a waiver (see SUP 8).
- 2 For definitions of items, refer to the Guidance Notes for the form. If you have any difficulty in completing this return, please telephone 020 7676 0660.
- 3 Enter amounts to the nearest thousand omitting 000s.
- 4 The form should be returned within **10 business days (14 business days if submitted electronically)** of the reporting date when completed on an unconsolidated/solo-consolidated basis and within **20 business days (24 business days if submitted electronically)** of the reporting date when completed on a consolidated basis. Please address the form to:

**The Financial Services Authority**  
**c/o Monetary and Financial Statistics Division**  
**Domestic Banking Statistics (HO-4)**  
**Bank of England**  
**Threadneedle Street**  
**London EC2R 8AH**

- 5 Returns may also be delivered to the Works Gate at the Lothbury entrance of the Bank of England between 9.00am and 5.00pm, Monday to Friday. Envelopes should be clearly addressed as above.

FSA use only	Logged in	Data entered

\* For unconsolidated/solo-consolidated entities, this will be the FSA firm reference number. For consolidated reporters, this will be the FSA firm reference number of the institution on whom the obligation to report has been placed. This box must be filled in by all reporters (SUP 16.3.7R).

PART 1

LARGEST EXPOSURES TO INDIVIDUAL NON-BANK COUNTERPARTIES AND GROUPS OF CLOSELY RELATED

Number of exposures reported in this Section

Item no	Counterparty (principal counterparty in the case of groups of closely related institutions)	Amount at risk at reporting date	Specific bad debt provisions made against the balance in column B	Eligible collateral held at the reporting date	Exposure at reporting date, after eligible offsets only		Maximum exposure during period	
					Amount	% LECB	Amount	% LECB
					F	G	H	J
A	B	C	D					
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TOT1  
PC1

Total to Part 7

NON-BANK COUNTERPARTIES

Item no cont'd	Covered by guarantees at the reporting date	Exposure at reporting date, after offsets and concessions		Amount included in the clustering ratio	Amount subject to 'Soft' Limits (also report in Part 8)
		Amount	% LECB		
		R	S		
K				U	V
1					
2					
3					
4					
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TOT1	.....	Total to Part 7	<input type="text"/>
PC1	.....	% LECB	<input type="text"/>

PART 2

LARGEST EXPOSURES TO INDIVIDUAL COUNTERPARTIES AND GROUPS OF CLOSELY RELATED

Number of exposures reported in this Section

Item no	Individual counterparties (but see reporting definitions) for this Part of the report	Amounts at risk at reporting date	Specific bad debt provisions made at reporting date against the balance in column B	Eligible collateral held at the reporting date	Exposure at reporting date, after eligible offsets only		Maximum exposure during period	
					Amount	% LECB	Amount	% LECB
					F	G	H	J
A	B	C	D					
1	Individually <2.5% LECB*							
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20								
<b>TOTAL</b>								

\* This line should contain the aggregate of exposures which individually are less than 2.5% of LECB. If no connected exposures are reported in this Part, leave blank; otherwise the line should contain figures, even zeros.





PART 3

LARGEST EXPOSURES TO BANKS, BUILDING SOCIETIES, RECOGNISED INVESTMENT FIRMS, RECOGNISED

Number of exposures reported in this Section

Item no	Counterparty (principal counterparty in the case of groups of closely related institutions)	Amount at risk at reporting date	Specific bad debt provisions made against the balance in column B	Eligible collateral held at the reporting date	Exposures to non-bank counterparties closely related to counterparty in Column A (if separately identifiable and reportable in Part 1)	Exposure at reporting date, after eligible offsets and including related exposures		Maximum exposure during period	
						Amount	% LECB	Amount	% LECB
	A	B	C	D	E	F	G	H	J
1									
2									
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TOT1

Total to Part 7

CLEARING HOUSES AND RECOGNISED EXCHANGES - ALL MATURITIES

Item no cont'd	Covered by guarantees at the reporting date	Amount subject to 1- 3 year derivatives concession (80% thereof)	Exposure at reporting date, after offsets and concessions		Amount subject to 'Soft' Limits (also report in Part 8)
			Amount	% LECB	
			R	S	
	K	P			V
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PART 4

LARGEST EXPOSURES TO BANKS, BUILDING SOCIETIES, RECOGNISED INVESTMENT FIRMS, RECOGNISED

Number of exposures reported in this Section

Item no	Counterparty (principal counterparty in the case of groups of closely related institutions)	Amounts at risk at reporting date	Specific bad debt provisions made at reporting date against the balance in column B	Eligible collateral held at the reporting date	Exposures to non-bank counterparties closely related to counterparty in Column A (if separately identifiable and reportable in Part 1)	Exposure at reporting date, after eligible offsets and including related exposures	
						Amount	% LECB
	A	B	C	D	E	F	G
1							
2							
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...							

CLEARING HOUSES AND RECOGNISED EXCHANGES WITH A MATURITY OF 1 YEAR OR LESS

Item no cont'd	Covered by guarantees at the reporting date	Exposure at reporting date, after offsets and concessions		Amount subject to 'Soft' Limits (also report in Part 8)
		Amount	% LECB	
		R	S	
	K			V
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PART 5

LARGEST EXPOSURES TO BANKS, BUILDING SOCIETIES, RECOGNISED INVESTMENT FIRMS, RECOGNISED

Number of exposures reported in this Section

Item no	Counterparty (principal counterparty in the case of groups of closely related institutions)	Amounts at risk at reporting date	Specific bad debt provisions made at reporting date against the balance in column B	Eligible collateral held at the reporting date	Exposures to non-bank counterparty closely related to counterparty in Column A (if separately identifiable and reportable in Part 1)	Exposure at reporting date, after offsets and including related exposures	
						Amount	% LECB
	A	B	C	D	E	F	G
1							
2							
3							
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TOT5 .....

PC5 .....

CLEARING HOUSES AND RECOGNISED EXCHANGES WITH A MATURITY OF OVER 1 YEAR

Item no cont'd	Covered by guarantees at the reporting date	Amount subject to 1- 3 year derivatives concession (80% thereof)	Exposure at reporting date, after offsets and concessions		Amount reported in Column U, Part 1, for non- bank counterparty related to counterparty in Column A	Amount included in clustering ratio	Amount subject to 'Soft' Limits (also report in Part 8)
			Amount	% LECB			
			R	S			
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...							

TOT5	.....	Total to Part 7	<input type="text"/>
PC5	.....	% LECB	<input type="text"/>

PART 6

LARGEST EXPOSURES TO ZONE A CENTRAL GOVERNMENTS AND CENTRAL BANKS

Number of exposures reported in this Section

Item no	Counterparty (principal counterparty in the case of groups of closely related institutions)	Amounts at risk at reporting date	Specific bad debt provisions made at reporting date against the balance in column B	Exposure at reporting date, after eligible offsets only		Maximum exposure during period		Amount subject to 'Soft' Limits (also report in Part 8)
				Amount	% LECB	Amount	% LECB	
				F	G	H	J	
A	B	C					V	
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TOT6

Total to Part 7





Item no cont'd	Covered by guarantees at the reporting date	Amount denom- inated in local currency and funded by liabilities in the same currency	Exposure at reporting date, after offsets and concessions		Amount included in the clustering ratio	Amount subject to 'Soft' Limits (also report in Part 8)
			Amount	% LECB		
	K	Q	R	S	U	V
1						
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...						
TOT7			Total of Part 7			
TOT1			From Part 1			
TOT2			From Part 2			
TOT5			From Part 5			
GT			Grand Total			
PC			% LECB			

PART 8  
EXPOSURES SUBJECT TO SOFT LIMITS

Adjusted capital base (from Item B110 in Form BSD3, Section B)

Date agreed

Number of exposures reported in this section

Item no	Issuer by individual exposure					Excess over adjusted capital base		Specific risk charge (To agree with Form BSD3)
	Counterparty  A	Total exposure at reporting date  B	% of adjusted capital base  C	Reported in which Part of Form  D	Exposure number in that Part  E	Amount  F	Agreed liimit (% of adjusted capital base)  G	
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2								
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TOT

Total Specific Risk Charge

**In SUP 16 Ann 2G, amend the supervisory guidance note as follows:**

**SUP 16: Reporting requirements**

**Ann 2G Supervisory guidance notes**

1 The following guidance notes and the reporting instructions apply specifically to the supervisory returns contained in this folder (Annex 2 of SUP). They do not relate to the completion of the forms contained in the Bank of England's Banking Statistics Definitions folder. There are some common areas, nevertheless, where the definitions in the Bank's statistical folder apply equally to items reported in the supervisory returns. Thus, where no specific guidance is contained within these notes and definitions, reporting institutions should be guided by the Bank of England's Banking Statistics Definitions.

In these Guidance Notes, the term 'bank' is generally used to cover those institutions defined as a UK bank, an EEA bank or a bank established outside the EEA in the Handbook Glossary of Definitions, unless specified otherwise. In the case of identifying counterparties on the capital adequacy (BSD3), liquidity (LR) and large exposures (LE2 or LE3, as appropriate) returns, the term 'bank' also covers building societies as defined in the Handbook Glossary of Definitions.

...

10 For the purposes of determining **large exposures**, separate exposures granted to the same counterparty should be aggregated. Exposures to a number of individual counterparties should be aggregated and considered as a single exposure where those counterparties are financially connected with one another so that the financial soundness of one of them may affect the other or others. Exposures to a number of public sector bodies or local authorities should be reported as separate exposures. Exposures to individual counterparties within a group should be separately identified within their respective aggregates on the Form LE2 or LE3 as appropriate. In the case of the B7, institutions should send these details directly to their supervisor and not include the breakdown on the Form itself.

...

24 Where claims on a counterparty are collateralised by cash (see SGN25) or by securities or bills issued by Zone A central governments, Zone A central banks or multilateral development banks (see Appendix E), a lower risk weight may apply. The risk weight category under which the claim should be reported is

determined by the nature of the collateral, as follows:

...

Where lower risk weights have been applied to reflect collateral, enter the relevant amounts in Form BSD3 Appendix A-III and/or B-IX as appropriate (Exposures Collateralised/Guaranteed/Netted). Collateral on large exposures should also be reported on Forms LE2 or LE3 as appropriate.

...

26 On-balance sheet

...

**Note:** Back-to-backs allowed to be netted out on returns made to the Bank of England for statistical purposes should not be netted out in calculating the size of an exposure for ~~LE2~~ large exposures purposes (see Definitions for Forms LE2 or LE3, as appropriate, for more guidance generally).

...

**Insert the following:**

**(a) new Guidance note;**

**(b) new validations; and**

**(c) new 'Cell code' version of the Form LE3;**

**in SUP 16 Ann 2G after the Form LE2 Guidance note and before the Form LR Guidance note.**

**(a) Guidance note**

### **Large Exposures (Form LE3)**

#### **Introduction**

Form LE3 monitors compliance with Chapter LE (Large exposures) in the Interim Prudential Sourcebook for Banks, which we also refer to as *IPRU (BANK)*. As stated in *SUP 16.7.7R*, only *UK banks* must complete this form. You should read these notes with all relevant chapters in *IPRU (BANK)* as well as the Supervisory Guidance Notes (SGN) (in *SUP 16 Ann 2G*) in force on the date to which the form relates.

To monitor compliance with Chapter LE in *IPRU (BANK)*, three significant ratios for monitoring are reported in Parts 1-7 of the form. These important columns are all highlighted in the form and you should use them to monitor your large exposures.

#### Issue to monitor

#### Relevant columns of form

Exposures that equal or exceed 10% of the Large Exposures Capital Base (LECB) at the reporting date

F and G

Other exposures that equalled or exceeded 10% of LECB during the period, but are below 10% at the reporting date

H and J

Clustering of large exposures (after eligible offsets and exempt amounts) which equal or exceed 10% of the LECB

R and S, and taking account of T in Part 5

Exposures that exceed 25% of LECB at the reporting date, so should have been pre-notified

For pre-notification, the figures in columns F and G are used; for monitoring, columns R and S are used, also taking account

of column V.

### **Denomination of reported exposures**

You (the reporting *bank*) should report:

- exposures in sterling, unless we (the *FSA*) have agreed in writing that you can report on this and other returns in Euros;
- figures in 000s, unless otherwise indicated; and
- all claims, loans and advances in sterling (or Euros). When figures are denominated in currencies other than sterling, for example, gold and other precious metals or other commodity units, you should translate these into sterling (or Euros) at the closing middle market spot rate for the day of the report. However, where you are reporting the maximum exposure during a reporting period, you should use the closing middle market spot rate for the day of the maximum exposure.

### **Exposure limits and concessions**

You should get our written agreement before entering into an exposure that exceeds 25% of LECB and before entering its details in the relevant column of the LE form. You may get agreement for:

- (1) exempt exposures eg interbank exposures with a maturity of one year or less;
- (2) exposures covered by collateral<sup>1</sup>;
- (3) exposures covered by guarantees<sup>2</sup>;
- (4) exposures within the scope of a connected exposure concession;
- (5) exposures covered by a 1-3 year derivative concession; or
- (6) exposures subject to 'soft' limits.

See also 'Reducing an exposure' below for more information.

---

<sup>1</sup> Only cash and Zone A central government and central bank securities should be regarded as eligible collateral.

<sup>2</sup> Either parental or third party guarantees, the latter only where your large exposures policy statement includes a section on guaranteed exposures.

## **An exposure**

See SGN9. You should monitor and report large exposures on an unconsolidated/solo-consolidated basis and, if agreed with us, a consolidated basis. You should measure an exposure as the amount at risk arising from the total of your business to a counterparty, after deducting specific bad debt provisions and eligible collateral. This includes business conducted on or off-balance sheet<sup>3</sup>, after taking account of netting and syndicated loans and sub-participations. So, the figures reported in column F of the LE3 are your firm's exposure to each counterparty that you measure against the reporting threshold (10% of LECB).

## **A counterparty**

See SGN11 to SGN13 and SGN19 to SGN23.

For the rest of these instructions, references to banks include *banks*, *building societies* and recognised investment firms (as defined in SGN20), as well as *recognised clearing houses* and recognised exchanges (listed in Chapter BC (Credit risk in the banking book), Section 5, of *IPRU (BANK)*). However, references to the reporting bank, the banking book, central banks and state owned banks retain the narrower meaning.

A counterparty will generally be either:

- (i) the borrower (customer);
- (ii) the person guaranteed (where the reporting bank is providing such guarantee);
- (iii) in the case of a security held, the issuer of a security; or
- (iv) in the case of a derivatives contract, the party with whom the contract was made.

In some circumstances, you may be uncertain which of two counterparties is the primary obligor (eg on a bill where there is a claim on both the drawer and the acceptor). When in doubt, you should either report the exposure twice, as an exposure to each counterparty, or ask us for our view. However, in the case of:

- (a) bills held, which a bank (other than the reporting bank) has accepted, you should report the claim as a claim on a bank;
- (b) bills held with per aval endorsements, you should report the claim as a claim of over one year maturity on the avalising bank;

---

<sup>3</sup> NOTE : Exposures entered into by a bank as a trustee are excluded from the scope of the large exposures return.

- (c) an explicit unconditional irrevocable guarantee provided by a third party, you may report the transaction as an exposure to the guarantor. You should seek our agreement before reporting in this way. In agreeing this, we would expect you to include a section on guaranteed exposures in your large exposures policy statement. In particular, we would expect a consistent approach to reporting such exposures. You should show the underlying exposure being guaranteed in the relevant Part of the form, and the amount of the guarantee in column K. You should also report the exposure to the guarantor if it falls within the reporting threshold for the relevant part of the form. We do not expect you to report exposures to guarantors without having approved the credit risk of the guarantor and the type of the exposure under your normal credit approval procedures; and
- (d) contracts (where for example you fund the activities of a company that trades on an exchange, whether for that company's own account or for clients), you should report the full amount of the funding as an exposure to that company. You should take care when identifying the entity with whom you have entered into a contract. However, you may agree an alternative reporting method with us in writing.

### **Coverage**

You should complete Form LE3 both on an unconsolidated/solo-consolidated basis and, where relevant, a consolidated basis.

- (a) You should report exposures arising in all of your *branches* (including overseas *branches*) and any *subsidiaries* that are included for your 'solo' (unconsolidated) capital ratio, in Form LE3 on an unconsolidated/solo-consolidated basis. Where you include *subsidiaries*, you should agree this with us in writing first.
- (b) You should also report in Form LE3, on a consolidated basis, exposures in companies reported under (a) and those arising in *group* companies that are included for your consolidated reporting. If you have to include such *group* companies, you should agree this with us in writing first. Separately, you must send us annually a list of all companies included in your consolidated large exposures reporting, under SUP 16.7.7R.

Important: You should include all companies subject to consolidation in your consolidated large exposures return, regardless of the technique you use to consolidate on Form BSD3. The scope of your solo and consolidated supervisory returns should be determined by the principles in Chapter CS (Consolidated supervision) of *IPRU (BANK)* and you should write to us to agree whether there are such companies to be included first.

### **Large Exposures Capital Base (LECB)**

You should calculate the capital base used as the basis for monitoring and controlling large exposures in the same way as that used for capital adequacy monitoring ie the sum of allowable Tier 1 and Tier 2 capital, less any deductions. You should also agree the LECB with us in writing, and report it on the front of Form LE3, along with the lowest agreed LECB applying



during the reporting period. We may compare some of the exposures reported in column H with the lowest LECB to identify exposures that should have been pre-notified to us.

Where you have agreed holdings of tradeable securities subject to ‘soft’ limits with us, you may use an adjusted capital base incorporating Tier 3 capital to measure these exposures against. However, you should report this adjusted capital base in Part 8.

## **Netting**

The circumstances in which net exposures are appropriate for LE3 purposes are:

### **1 On balance sheet**

- (a) You should not offset credit balances against debit balances unless you meet the provisions in Chapter NE (Collateral and netting) of *IPRU (BANK)*.

Note: Back-to-backs allowed to be netted out on returns made to the Bank of England for statistical purposes should not be netted out in calculating the size of an exposure for LE3 purposes.

- (b) Where a *repo*/reverse *repo* or similar transaction is involved, this should be consistent with Chapter NE (Collateral and netting) of *IPRU (BANK)*. Netting of claims and obligations arising from all *repos*/reverse *repos* held in the trading book will then be acceptable.

However in the banking book, netting of counterparty risk will not generally be acceptable because:

- (i) *repos* should attract issuer risk on the securities ‘repoed’ out; and
- (ii) reverse *repos* where eligible collateral<sup>4</sup> is reversed in should attract issuer risk on that eligible collateral.

As there is no counterparty risk reportable in these circumstances, it follows that no claims can be netted.

When a reverse *repo* is undertaken, counterparty risk will only arise where the collateral reversed in is ineligible. You should report such reverse *repos* as if an unsecured cash loan had been made to the counterparty to the reverse repo. It is acceptable to report such counterparty risk net of obligations to the same counterparty arising from:

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<sup>4</sup> For these purposes eligible collateral is restricted to Zone A central government and central bank securities.

- (i) other reverse *repo* business where eligible collateral has been taken with the same counterparty and only to the extent that the value of the collateral is in excess of the cash paid away; and
- (ii) on *repos* with the same counterparty and only to the extent that the cash reversed in exceeds the value of the securities repoed.

Reporting banks wishing to net counterparty risk arising from *repo* business in the banking book should first contact us. We would consider it appropriate to report on this basis where your systems are considered suitable.

When they apply, you should report risk cushion factors gross and use the residual maturity of the securities (not the maturity of the *repo* transaction) to calculate them. And, where both legs of the transaction involve securities, use the maturity of the longer dated securities to calculate the risk cushion factor.

## 2 Off balance sheet netting

You may report net those amounts due for foreign exchange, interest rate, equity and commodity related transactions. However, this is only if you have calculated the net amount as part of an agreement between two counterparties, based on netting by novation (see SGN26).

To benefit from close-out netting, the terms of Chapter NE (Collateral and netting) of *IPRU (BANK)* should be met. If they are met, you should calculate the credit equivalent amount of your portfolio of contracts with each counterparty by adding together:

- (a) the net replacement cost of all nettable contracts with a positive mark to market value, offset by all contracts with a negative mark to market value; and
- (b) for each contract in the portfolio, the amount for the potential future credit exposure (add-on), as described elsewhere.

NOTE: For these purposes, you should take the maturity of the net replacement cost as  $\leq 1$  year if there is at least one  $\leq 1$  year obligation under the netting agreement. In such cases, you should report net current exposure to banks in Parts 3 and 4 of the form.

If there are no  $\leq 1$  year obligations but there are obligations of  $>1$  year but  $\leq 3$  years, you should take the maturity of the net replacement cost figure to fall between 1 and 3 years too. So, you should report these in Parts 3 and 5 of the form.

The netting of add-ons is acceptable where the terms of Chapter NE (Collateral and netting) of *IPRU (BANK)* have been met (see SGN35). However, where the potential future exposures (add-ons) cannot be netted, you should calculate these and report

according to the residual maturity of the contract. So, you should report add-ons relating to over 1 year contracts gross in Part 3 and either Part 4 or 5.

When dealing with a counterparty incorporated in a 'netting friendly' jurisdiction, but which has *subsidiaries* or *branches* in 'netting unfriendly' jurisdictions, you should still report transactions with those *subsidiaries* and *branches* gross. This means that the total exposure to such a counterparty will be a mixture of net and gross exposures.

### **The amount at risk**

For exposures arising in the banking book, you should report the amount at risk as the book value of your (the reporting bank's) actual or potential claims, contingent liabilities or assets. This is except for certain exposures explained below or advised to you as the reporting bank. You should include accounts that satisfy the netting criteria above, net, and all other accounts gross.

In the case of syndicated loans/sub-participations where you act as manager or co-manager of a loan financed by several institutions, you should report only your share of the loan. The participating institution, however, should have made a deposit with you covering its full share of the loan, and there should be no recourse to you by the participating institution. A participating institution should report its exposure as an exposure to the ultimate borrower.

You should calculate exposures in line with UK generally accepted accounting practice. However, in certain cases you may wish to use an alternative accounting practice. If this is the case, you should talk to us to determine whether reports are acceptable on that basis. The accounting practice you use to report exposures should, unless otherwise stated below, be the same as the one you use to calculate your capital base.

For exposures arising in the trading book, you should mark all positions to market daily. (However, if you do not wish to do this for cash items with a residual maturity of one month or less, you should seek our approval in writing first.) Where a market determined price is not readily available, you may generate your own mark to market valuation. You should also value positions in line with the trading book policy statement agreed with us.

### **Interest and dividends**

If they are reflected in your capital base, you should include interest and dividends due but not yet received, in the value of outstanding claims. However, in recognising the systems difficulties of reporting inclusive of such amounts, we may agree, in writing, for the following treatment to be applied to exposures in the banking book.

- Provided the exposure is well below 25% of LECB, or a pre-agreed limit, there is no need for the bank to include the accrued interest element in the reported figure.

- If an exposure is close to the 25% level, or a pre-agreed limit, you should be able to demonstrate that, including the accrued interest element, the exposure is below the limit, and to guarantee that the limit is not breached.

This treatment is not for trading book exposures, as these exposures are marked to market daily. This means that the accrued interest element is included in the mark to market valuation. Unearned finance charges for instalment lending should be excluded.

## **Securities positions and positions arising from derivative contracts<sup>5</sup>**

### **(i) Issuer risk**

If you deal in *securities*, you should calculate the exposure (to the issuer of the *security*) as follows.

- (a) Banking book - the net long position for each instrument issued by the issuer. So, in other words, the sum of the excess (where positive) of the book value of all long positions over all short positions. A long position in one *security* issue should not be offset by a short position in another, made by the same issuer, except for those issued by central governments and central banks.

You may adopt netting of long and short positions for *securities* issued by central governments and central banks, where the criteria in SGN27 are all met.

- (b) Trading book – first, you should calculate the excess of the current market value of all long positions over all short positions, for each instrument issued by the counterparty. You then calculate the exposure as the excess (where positive) of the current market value of all long positions over all short positions in **all** the financial instruments issued by the counterparty. (Positions should not be netted within groups of closely related counterparties.)

Positions should not be netted between banking and trading books.

### **Forward transactions**

For both banking and trading book calculations, you should include commitments to buy *securities* at a future date (including futures contracts) as long positions and forward sales as short positions. Where you have made a commitment to an issuer under a note issuance facility<sup>6</sup>, to buy *securities* at their request that are unsold on the issue date, you should add these to the long positions. A net short position does not give rise to an exposure covered by this return.

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<sup>5</sup> See Chapter LE (Large exposures), Section 7 of *IPRU (BANK)*.

<sup>6</sup> Includes revolving underwriting facilities, Euronote facilities and any similar arrangements

## Options positions

The following treatment should be given to *options*:

- (a) on *securities*:
  - (i) Written Put - long position in the underlying *security*.
  - (ii) Purchased Put - short position in the underlying *security*.
  - (iii) Purchased Call (where the contract has been given a book value in the accounts of the reporting institution) - long position in the underlying *security*.
  - (iv) Written Calls - do not give rise to an exposure covered by this return.
- (b) on an index:
  - (i) Broadly based and cash settled indices – you do not have to break these indices down into their constituent parts. The highly liquid equity indices listed in Chapter LE (Large exposures), Section 12, of *IPRU (BANK)* may be seen as broadly based.
  - (ii) Narrowly based/non-cash settled indices – you should break these indices down into their component stocks to calculate the issuer risk on the underlying stocks.

To calculate the amount to be included in the issuer risk calculation, you should use the notional principal valued at the strike price.

## Repos/Reverse repos

- (a) Banking book - For *repos* in the banking book, you should include the *security* sold as a long position. And you should treat reverse *repos* as loans unless eligible collateral is held (ie Zone A government *securities* and cash), in which case you should treat them as collateralised loans and the collateral held as a long position. (Do not include the forward leg as a short position.) Where collateral is ineligible, report the counterparty risk on the cash loan in full.
- (b) Trading book - For both *repos* and reverse *repos* in the trading book include outgoing *security* if you are the ultimate owner. In addition, you should report the counterparty risk on both *repos* and reverse *repos* (see below under “Counterparty risk - Repos/Reverse repos”).

The reporting treatment for *stock lending* transactions is the same as for *repos* and the treatment for stock borrowing is the same as that for reverse *repos*.

## Underwriting commitments

This covers discrete issues of *securities* (equities and bonds) only. This means that the treatment for underwriting set out here does not apply to any continuing or revolving commitment, where the exposure should be taken to be the full amount of the sum underwritten.

There are two distinct phases in the reporting of underwriting commitments for *securities* issues: (i) date of initial commitment until Working Day Zero; and (ii) Working Day Zero onwards. (Date of initial commitment and working day zero are defined in Chapter TU (Underwriting in capital adequacy framework) of *IPRU (BANK)*.)

- (i) Date of initial commitment until working day zero - for both non-expert and expert underwriters, notification should be on the basis of a credit equivalent amount (CEA). You should only offset amounts sub-underwritten or sold forward against the underwriting commitment in calculating the CEA when they are agreed before the reporting institution commits to the client. Then, you should calculate the CEA (on the basis of the net amount where applicable) using the credit conversion factors in the following table:

	Implied Conversion Factor	Post-notify (10%) (1)	Pre-notify (25%) (2)	Maximum 'expert' guideline (3)
All debt instruments	18.75%	53%	133%	400%
Preference share, constituents of the FT-SE 100 index, and related convertibles, US S&P 500, Japan Nikkei 225	23%	44%	108%	325%
Constituents of FT All-share index & related convertibles; other major non-UK equities	30%	34%	83%	250%
Other equities with a normal market size and other second tier non-equities	43%	24%	58%	175%
Other UK and non-UK equities and related	75%	14%	33%	100%

convertibles

- (1) The nominal amount (expressed as a percentage of capital) which corresponds to the post-notification threshold when converted into credit equivalent terms.
  - (2) The nominal amount (expressed as a percentage of capital) which corresponds to the post-notification threshold when converted into credit equivalent terms.
  - (3) The lower of 400% nominal or three times the pre-notification trigger. (The latter applies in all cases other than debt underwriting.)
- (ii) Working Day Zero Onwards - post working day zero exposures for both experts and non-experts are calculated on the same basis. The measure of exposure is based on the net underwriting position (= gross underwriting commitment + purchases - sales - sub-underwritings) multiplied by a discount factor. Apply discount factors as:

Working Day 0	100%
Working Day 1	90%
Working Day 2	75%
Working Day 3	75%
Working Day 4	50%
Working Day 5	25%
after Working Day 5	0%

The amount to be reported = the net underwriting position x (100% - discount factor). This net exposure should be added to other exposures to the issuer. Holdings of *securities* as a result of an underwriting commitment are also eligible for 'soft' limits, as set out below in the section on Reportable exposures.

## (ii) Counterparty risk

### Forward Transactions

Forward sales and purchases of *securities* in both the banking and trading books cause a counterparty exposure. When receiving *securities* in exchange for cash or *securities*, you should report the higher of:

- (i) zero plus an add-on for potential future exposure; or
- (ii) the difference between the market value of the *securities* to be received and the contracted value for forward delivery plus an add-on for potential future exposure.

When receiving cash or *securities* in exchange for *securities*, you should report the higher of:

- (i) zero plus an add-on for potential future exposure; or

- (ii) the difference between the contracted value for forward delivery and the market value of the *securities* to be delivered plus an add-on.

The amounts to be received or given should include all cash flows related to the *securities* and the transactions.

You should calculate the add-on in line with the risk cushion factors in Chapter TC (Counterparty risk in the trading book), Section 3.3.3, of *IPRU (BANK)*.

In addition to these types of exposure, where compensation is due to be paid in the future in exchange for a contract, you should report the current market value of the payment due.

### **Settlement of transactions**

#### **(a) Free Deliveries**

An immediate exposure arises where you have settled your side of the transaction but not yet received the countervalue, ie final funds or an undertaking to transfer funds by close of business on the same day. If you have provided the cash, you should report the current market value of the asset being bought for trading book exposures, and the book value for banking book exposures. However, if you have the asset, you should report the cash due for both banking and trading book exposures. (Where the transaction is effected across a national border, there is a window of one working day.)

#### **(b) Unsettled Securities Transactions**

Claims on a counterparty arising in the course of settlement of a *securities* transaction where neither you nor the counterparty have settled their side of the transaction should be reported where settlement is 5 days overdue. This is the case for both banking and trading books. You should then calculate the exposure as the difference between the amount due and the current market value of the instrument.

### **Repos/Reverse repos**

For *repos*/reverse *repos* in the trading book, you should calculate the exposure to the counterparty as the mark to market differential between the collateral provided by you and that received from the counterparty. In the case of undocumented *repos*, you should include an add-on for potential future exposure in line with the risk cushion factors in Chapter TC (Counterparty risk in the trading book), Section 3.3.3, of *IPRU (BANK)*.

### **Interest rate, foreign exchange rate, equity and commodity related contracts**

For exposures relating to over-the-counter interest rate (OTC), foreign exchange rate, equity and commodities contracts, the amount at risk for the reporting of large exposures



may be less than the nominal exposure. These exposures should be reported and added to other exposures to the same counterparty.

Category	Coverage
Interest rate related contracts	single currency interest rate swaps, basis swaps, forward rate agreements and products with similar characteristics, interest rate options purchased (including caps, collars and floors purchased as stand-alone contracts) and similar instruments. Contracts of a similar nature concerning bonds should also be included in this category.
Foreign exchange rate related contracts	cross currency swaps, cross currency interest rate swaps, forward foreign exchange contracts, currency options purchased and similar instruments. Contracts of a similar nature concerning gold should also be included in this category.
Equity and Commodities Contracts	Equity options purchased, swaps and similar contracts, commodity options purchased, swaps and similar instruments involving physical commodities.

You should calculate the amount at risk as the CEA of these items, using the replacement cost method. For banking book transactions, this should be consistent with reporting on Form BSD3. For trading book exposures, you should make valuations in line with the valuation procedures outlined in the Trading Book Policy Statement, which should be agreed with us.

Note: You should not report a CEA for either contracts traded on exchanges where they are subject to daily margining requirements or for OTC foreign exchange contracts (except contracts concerning gold) with an original maturity of 14 calendar days or less. When trading on an exchange with daily margining requirements, credit exposure only arises for initial margin and excess variation margin payments. So, you should report these exposures as on-balance sheet exposures to the exchange (or its associated clearing house).

### **Mark to market amount**

You should mark to market in a prudent and consistent way. See SGN34 for more guidance.

### **Notional principal amount**

Category	Calculate the notional principal amount as:
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Exchange rate contracts and bond options.	The amount of principal underlying the contract, for the asset (currency, equity, bond or commodity) being received by you. Translate this into sterling (or Euros, if reporting in that currency) at the spot exchange rate on the reporting date.
An amortising swap, ie one based on a steadily declining notional principal.	The amount outstanding at the reporting date.
A swap based on a fluctuating level of principal.	The maximum notional principal outstanding over the remaining life of the swap.
Amortising interest rate swaps with cash-flow mismatches in payments.	The notional principal may differ between the two sides of the swap. You should take the notional principal amount as the amount of principal underlying the contract for the asset being received by you.
Swaps involving reference assets.	This should relate to the total volume over the whole contract (not simply the volume per settlement period).
Options purchased.	The underlying principal on the option using, for currency options, the received currency at the spot rate on the reporting date.
Contracts with multiple exchanges of principal.	Multiply the potential future exposure by the number of payments still to be made under the contract.

You should not generally enter into contracts at off-market prices. If any contracts are undertaken at off-market prices, you should contact us to discuss the background and to agree a reporting treatment. If you arrange swaps at off-market rates or if options begin deep in the money, contracts may include an element of ‘disguised’ credit exposure. In general, we would consider a disguised credit exposure to be present where the contract either starts with a significantly positive mark to market, or because of an assumption of unchanged interest and exchange rates. In the case of interest rate or cross currency swaps arranged at off-market prices, we will require special treatment for contracts which have been created to disguise a credit exposure to the counterparty. You should discuss such cases with us.

### **Remaining maturity**

You should take the remaining maturity of a swap as the time until the final expiry of the swap. However, for FRAs and similar products, the remaining maturity is the time from the reporting date until the end of the period to which the interest rate underlying the contract relates (see SGN34 for more detail generally).

A contract may be structured to settle outstanding exposures following specified payment dates and the terms reset so that the mark to market value of the contract is zero on those dates. In such cases, the residual maturity should be set as the time until the next reset date. However, in the case of interest rate contracts with a residual maturity of more than one year, the potential future exposure matrix multiplier may have a floor of 0.5%, even if there are reset dates of a shorter duration.

### **Replacement cost methodology**

You should calculate the CEA in line with the reporting instructions in SGN34.

### **Reportable exposures**

Exposures to these categories of counterparties should be reported separately:

- (i) individual non-bank<sup>7</sup> counterparties, and groups of closely related non-bank counterparties (in Part 1);
- (ii) closely related bank and non-bank counterparties connected to you (in Part 2);
- (iii) *banks, building societies*, recognised investment firms, *recognised clearing houses* and recognised exchanges (in Parts 3, 4 and 5);
- (iv) Zone A central governments and central banks (in Part 6);
- (v) Zone B central governments and central banks (in Part 7); and
- (vi) exposures subject to ‘soft’ limits (in Part 8).

Report exposure to individual, or groups<sup>8</sup> of closely related, counterparties in column A in each Part of the form, in descending order by size (ranked by column F). But you should report exposures to individual counterparties that are part of a group of closely related counterparties (see SGN12) as one exposure in Parts 1 and 3 to 7 of the form.

Each exposure should appear as a single line of the report, so counterparty names should not straddle lines. If you have no exposures to report in a Part of the form, you should enter 0 in the box for the number of exposures reported in that Part. A form still needs to be submitted if there are no reportable exposures at all.

You should include in the relevant part of the form all exposures that equalled or were greater than 10% of the LECB (in force at the time) at any time during the reporting period, even if

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<sup>7</sup> ie not a bank in the wider definition as set out on Page 2 under the definition of a counterparty.

<sup>8</sup> Except in Part 2

their current exposure may be less than 10% of the LECB. You may also have to report in column F some exposures that are currently less than 10% of LECB; if the exposure is currently less than £500, or €500 if reporting in Euros, you should enter 0 in columns B to G.

When assessing whether an exposure equals or exceeds 10% of the LECB for clustering purposes, you should calculate the figure as the exposure at the reporting date reported in column R<sup>9</sup>. Please note that you should only deduct third party unconditional irrevocable guarantees in that calculation if your large exposures policy statement includes a section on guaranteed exposures. See the Appendix to these definitions for examples of how to report clustering when you have exposures to related bank and non-bank counterparties.

You may measure the maximum exposure in the period based on the amount at risk (column B), rather than after eligible offsets (ie column F). While that is not ideal, it is acceptable to report the maximum amount at risk in column H, so long as that figure is equal to or greater than the figure reported in column F for the same counterparty. We may also agree, in writing, modified reporting of the maximum exposure if you have an extensive branch network or group structure, when reporting of limits and excesses would be allowed.

We may agree in writing that the use of ‘soft’ limits is appropriate if an exposure to an issuer arises as a result of the inclusion of holdings of tradeable *securities* in the trading book that exceed 25% of LECB. Where we have been told in advance of and agreed your limits for ‘soft’ limited exposures, you do not need to pre-notify us of any more exposures within these limits. However, you should report exposures within these limits in column V of the relevant Part on the form and also list them in Part 8. You will be subject to incremental capital requirements on these exposures.

### **LECB percentage**

The value of each counterparty exposure, which should be monitored against the large exposures framework, is calculated in columns F, H and R. These figures, as a proportion of LECB at the reporting date, are then reported in columns G, J and S. Figures should be shown to two decimal places (and the percentage sign omitted), so 15% will be reported as 15.00

### **Reducing an Exposure**

#### **Syndicated loans/Sub-participations**

See under “The amount at risk” above for the reporting treatment.

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<sup>9</sup> In Part 5, any figure reported in column T for that counterparty should be deducted before the amount is reported in Column U.

## **Bad debt provisions**

You should report in column B the book value gross of specific and earmarked general provisions for bad and doubtful debts. Similarly, where an exposure is marked to market, the valuation should be gross of any specific provisions. However, you should report such provisions in column C. You should also report exposures net of write-offs that have occurred since the last reporting date. You should report these write-offs in a letter to your usual supervisory contact.

## **Exposures secured by Eligible Collateral**

Where an exposure is fully secured by cash collateral in line with the terms of Chapter NE (Collateral and netting) of *IPRU (BANK)*, or where Zone A government securities are held as collateral, you should report the value of the collateral held in column D.

## **Exposures covered by guarantees**

You should report unconditional irrevocable third party guarantees in a consistent manner throughout the form.

- Where your parent bank guarantees an exposure, you should report the amount of the exposure that is guaranteed in column K.
- You may have an exposure that is guaranteed unconditionally and irrevocably by a third party. If so, and your large exposures policy statement includes a section on guaranteed exposures, you may also show the amount of the exposure (in other words, the part guaranteed) in column K. But you should also report the exposure to the guarantor in the relevant Part of the form if it exceeds any of the reporting thresholds.
- If the exposure by the guarantor is not being regarded as an exposure in its own right, or your large exposures policy statement does not include a section on guaranteed exposures, you should not report it in column K.
- Where an exposure is reduced by a guarantee, you should also report the total of all exposures to the guarantor in the relevant Part of the form (if the total exposure by the guarantor breaches the reporting threshold for that Part of the form).

## **1-3 year derivative concession**

You may weight derivative exposures with a maturity of over one year but less than three years at 20% for the calculation of exposures against limits in appropriate cases. However, you should agree such cases in writing with us first. For reporting, you should include these exposures unweighted in columns B and F of Parts 3 and 5. And then report the amount exempt under this treatment (ie 80% of derivative exposures of the relevant maturity) in column P.

## **Connected exposure ‘concessions’**

Where a connected exposure ‘concession’ eg a treasury concession has been agreed, you should include amounts covered by the concession in columns L to N of Part 2.

## **Clustering of large exposures**

You should calculate column U in line with the validations for each Part of the form. This should be the exposure at the reporting date less any amounts allowed to be set off, where the resultant figures (in column R) in Parts 1, 2, 5 and 7 are equal to or greater than 10% of LECB<sup>10</sup>. In the case of Part 2, the total of exposures after allowable offsets is measured against the LECB. You should report and total all entries in the clustering ratio column U in Parts 1, 2 and 5 in the boxes in Part 7. You should measure this total as a percentage of LECB to monitor compliance with the limit you have agreed with us.

## **Exposure categories**

In Parts 1 to 7, rank exposures in descending order according to column F, then in Part 8 rank them in descending order according to column C.

Then, please remember to note the number of exposures that you have reported in each Part of the form at the top of each page, even if the number is zero.

### **PART 1**

You should report exposures to individual non-bank counterparties and groups of closely related non-bank counterparties in this Part. You should not report an individual counterparty where it is a part of a group of closely related counterparties. Instead, the aggregate figure should be reported for the group. You should also include exposures to international organisations (including multilateral development banks and the Bank for International Settlements (BIS)).

You should report all exposures (ie as calculated in columns F and G) that equalled or exceeded 10% of LECB at the reporting date or during the period. Your report should cover the top 20 exposures at the reporting date, but you can exclude any exposures that are both less than £250mn and 5% of LECB (so, if all your exposures were less than 5% of capital and under £250mn in size, you would report no exposures).

### **PART 2**

This covers all exposures to individual non-bank and bank counterparties that are connected to

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<sup>10</sup> In Part 5, you should deduct, from the amount to be included in the clustering ratio, any sums recorded in Part 1, column U, relating to the same exposure; that should also appear in Part 5, column T.

the reporting bank. Unlike some other parts of the form, you should not generally total the exposures, so you should report individually all exposures that equal or exceed 2.5% of LECB (measured in column F).

However, you may total those exposures that are individually less than 2.5% of LECB at the reporting date and report them on the first line in Part 2. So, if you had five exposures each of 2% of LECB and three that were 5%, you would report a total of four exposures in the box (P2N) at the top of Part 2. And if you had no exposures below 2.5% and three that were 5%, you would enter zeros in line 1, and report four exposures in box P2N.

Any amounts exempt under a connected exposure ‘concession’ (ie treasury concession, reverse treasury concession, central risk management concession, or a parental guarantee/capital maintenance agreement), agreed in writing with us, should be reported in columns K to N. The concession reported against each individual exposure should show the amount of the concession used at the reporting date for that exposure, and not the overall limit available.

In the case of the maximum exposure in the period, this should be the total maximum exposure to connected counterparties at a single point in time. It should not be the sum of individual maximums for each counterparty taken at different points in time.

For the clustering ratio, if the total of all exposures after offsets and concessions (column R) equals or exceeds 10% of LECB, then you should show that amount in column U and carry it forward to Part 7.

### PART 3

This covers total exposures to banks<sup>11</sup> (or groups of closely related banks), irrespective of the original maturity of the exposure(s), where the exposure has equalled or exceeded 10% of the LECB in the reporting period. As such, the maximum exposure during the period is the maximum of all exposures to the counterparty in the period, irrespective of the maturity. Figures for the clustering ratio, taking into account exposures to non-bank counterparties closely related to the counterparties listed in column A, are covered in Part 5.

You may have exposures to a bank that is closely related to a non-bank counterparty to which you are also exposed<sup>12</sup>. If this is the case and the exposure to the bank and the non-bank counterparties taken together equals or exceeds 10% of your LECB, the exposure to the bank should be reported in Part 3. In addition, it should be shown in Part 4 if the exposure is 1 year or less in maturity and that part of the exposure greater than one year maturity, if any, should be reported in Part 5. Exposures to non-bank counterparties<sup>13</sup> that are closely related to the

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<sup>11</sup> The wider definition as set out on Page 2 under the definition of a counterparty.

<sup>12</sup> If you are unable to identify, separately, related exposures to banks and non-banks in the same group, see the guidance under “Reportable exposures” above.

<sup>13</sup> You would report these non-bank exposures in Part 1 if they breached the reporting limits for that Part of the

counterparties reported in column A should be reported in column E, irrespective of their size.

#### PART 4

This covers exposures to banks where the (original) maturity is 1 year or less. You should show exposures to groups of closely related bank counterparties in total.

You should report all exposures (ie as calculated in columns F and G) which equalled or exceeded 10% of LECB at the reporting date or during the period. Your report should cover the top 20 exposures at the reporting date, but you can exclude any exposures that are both less than £250mn and 5% of LECB (so, if all your exposures were less than 5% of capital and under £250mn in size, you would report no exposures). Where a loan is repayable in instalments, you should report the amounts in Parts 4 and 5, in line with their maturity. So, you include the amount to be repaid within one year in Part 4 and the part to be paid in over 1 year in Part 5.

You may have exposures to a bank that is closely related to a non-bank counterparty to which you are also exposed<sup>12</sup>. If this is the case and the exposure to the bank and the non-bank counterparties taken together equals or exceeds 10% of your capital base, you should report this exposure in Part 4 if it is 1 year or less in maturity. Exposures to non-bank counterparties closely related to the counterparties reported in column A should be reported in column E.

Classify a *security* with optional redemption dates that are exercisable by the holder according to the first optional redemption date. And report exposures arising from *repos*/reverse *repos* in Parts 4 or 5 according to the maturity of the *repo* contract, not the *security* repoed.

#### PART 5

This part covers exposures to banks with a maturity of over 1 year. You should show exposures that equalled or exceeded 10% of your LECB during the period here. In the case of groups of closely related institutions, you should show exposures in total.

Where a loan is repayable in instalments, you should report the amounts in Parts 4 and 5, in line with their maturity. So, you include the amount to be repaid in one year or less in Part 4 and the remainder in Part 5.

You may have exposures to a bank that is closely related to a non-bank counterparty to which you are also exposed<sup>12</sup>. If this is the case and the exposure to the bank and the non-bank counterparties taken together equals or exceeds 10% of your capital base, you should report this exposure in Part 4 if it is 1 year or less in maturity. You should report exposures with maturity of more than one year in this Part. Exposures to non-bank counterparties closely related to the counterparties reported in column A should be reported in column E. Then,

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return. However, they should be included in Part 3 even if they appear in Part 1 as well.



column T should show the amount that was included in column U in Part 1 of the form.

Classify a *security* with optional redemption dates that are exercisable by the holder according to the first optional redemption date. And, report exposures arising from *repos*/reverse *repos* in Parts 4 or 5, according to the maturity of the *repo* contract, not the *security* repoed.

See the earlier section on Reportable exposures for details of how to treat derivative exposures with a maturity of over one year but less than three years.

## PART 6

This is where you should include exposures to Zone A central governments and central banks which equalled or exceeded 10% of your LECB during the period. You should also report exposures to local authorities, states, other public sector bodies and state owned banks<sup>14</sup>, which it is appropriate to treat as an exposure to a central government, here (and such cases should be agreed with us). Counterparties that you regard as closely related should be shown in total. You should combine holdings of different *securities* issued by the same counterparty, or the same group of related counterparties.

## PART 7

You report exposures to Zone B central governments and central banks that equalled or exceeded 10% of the your LECB during the period in this Part. You should also report exposures to local authorities, states, other public sector bodies and state owned banks<sup>14</sup>, which it is appropriate to treat as an exposure to a central government, here (and such cases should be agreed with us). Counterparties that you regard as closely related should be shown in total. You should combine holdings of different *securities* issued by the same counterparty, or the same group of related counterparties. However, you may show the amount of any exposure denominated in local currency and funded by liabilities in the same currency in column Q<sup>15</sup>, as it is exempt.

## PART 8

Finally, this is where you should show holdings of tradeable *securities* in the trading book, which are subject to ‘soft’ limits. You should also have shown them in other parts of the form, and have identified them in column V in those Parts of the form.

They arise if an exposure to an issuer as a result of inclusion of holdings of tradeable *securities* in the trading book exceeds 25% of LECB and we have agreed in writing that the use of ‘soft’ limits is appropriate. Where we have been told in advance of and agreed your limits for ‘soft’

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<sup>14</sup> Recognised as a bank by the central government involved.

<sup>15</sup> You may, at your discretion, decide not to identify this but your treatment should be consistent. If it is not identified, the exempt exposure will be included in your clustering ratio.

limited exposures, you do not need to pre-notify us of any more exposures within these limits. However, you should report exposures within these limits in column V of the relevant Part on the form and also in column A in this Part. You will be subject to incremental capital requirements on these exposures. You should carry across the specific risk charges listed in column H to items B120 and B130 in Section B of the Form BSD3 to enable the calculation of any incremental capital charge on that form.

To calculate the relevant entries on this form, see the definitions for items B110-B140 in Section B of the Form BSD3, and Chapter TL (Incremental capital for large exposures), Chapter TI (Interest rate specific risk) and Chapter TE (Equity position risk), of IPRU (BANK). Show entries in column H in 000s, with no decimal points.

## ***APPENDIX***

### **Examples of how clustering is reported**

#### Example 1

A large group is headed up by A plc, which is not a bank. The reporting bank has an LECB of 1000 and has exposures of 120 to the non-banking<sup>7</sup> subsidiaries of A plc. It also has an over 1 year exposure of 90 to Bank B plc, which is a subsidiary of A plc.

- For Part 1, the non-bank exposures to A plc should be shown in columns B, F, R and U
- For Part 3, the bank exposure should be shown in column B along with the entry in column E of 90. Columns F and R would show the sum (210).
- For Part 5, the bank exposure would be shown in column B along with the entry in column E of 90. Columns F and R would show the sum (210). Column T would show the amount reported in column U in Part 1 ie 120. Because column S exceeds 10%, column U would equal column R less column T ie 90.
- In Part 7, it would pick up 120 from column U Part 1 and 90 from column U Part 5, giving a total of 210

#### Example 2

As for example 1 except the loan to Bank B plc is under 1 year

- Part 1 would show the non-bank exposures, as above
- Part 3 would show the bank exposures in column B and the non-bank exposure in column E, as above
- Part 4 would show the bank exposure in column B, with any under one year element of the non-bank exposure in column E
- Part 7 only picks up the 120 from Part 1, column U

#### Example 3

The reporting bank has an exposure of 40 to A plc. It also has exposures to Bank B plc totalling 150, of which 60 is under 1 year and 90 over 1 year.

- In Part 1, nothing would be reported (exposure is less than £250mn/5%)
- In Part 3, the exposure of 150 would be shown, with the non-bank exposure of 40 reported in column E
- In Part 4, the exposure of 60 would be shown if it was one of the top 20 (the exposure of 40 to A plc, or part of it, would be shown in column E if it had a maturity under one year)
- In Part 5, the exposure of 90 would be reported, along with 40 in column E (or that portion over 1 year, as long as it was at least 10) otherwise it would be too small to report in this Part. So long as the figure in column R is greater than 100 ie over 10% of LECB, it would feed into column U (column T being zero in this case).
- Part 7 would pick up the clustering figure from Part 5.

#### Example 4

As example 3 except the reporting bank cannot segregate the banking exposures from the non-banking exposures to A plc.

- As the majority of the lending is to the banking side, it would be reported in Parts 3-5.
- In Part 3, the exposure to A plc would be shown as 190 in column B, with no entry in column E.
- In Part 4, that portion relating to under one year would be shown, if it was one of the Top 20. No entry would be made in column E.
- In Part 5, that portion relating to over 1 year would be shown, assuming it was 10% of LECB or more. No entry would be made in columns E or T and, if the figure in column R exceeded 10% of LECB, it would feed in to column U.
- Part 7 would pick up any clustering figure from Part 5.

## (b) Validations

### LARGE EXPOSURES (FORM LE3)

#### ANALYSIS OF LARGE EXPOSURES

#### INTERNAL VALIDATIONS

##### Ref no LE3 column/item

	For each exposure reported	
1	$C^n$ (Parts 1-7)	$\leq B^n$
2	$D^n$ (Parts 1-5, 7)	$\leq B^n$
3	$C^n+D^n$ (Parts 1-5, 7)	$\leq B^n$
4	$F^n$ (Parts 1-7)	$= B^n-C^n-D^n+E^n$
5	$G^n$ (Parts 1, 3-7)	$= F^n/CB1*100$
6	$H^n$ (Parts 1, 3, 6 and 7)	$\geq F^n$
7	$J^n$ (Parts 1, 3, 6 and 7)	$= H^n/CB1*100$
8	$K^n$ (Parts 1-7)	$\leq F^n$
9	$L^n$ (Part 2)	$\leq F^n$
10	$K^n+L^n$ (Part 2)	$\leq F^n$

11	$M^n$ (Part 2)	$\leq F^n$
12	$K^n+L^n+M^n$ (Part 2)	$\leq F^n$
13	$N^n$ (Part 2)	$\leq F^n$
14	$K^n+L^n+M^n+N^n$ (Part 2)	$\leq F^n$
15	$P^n$ (Parts 3, 5)	$\leq F^n$
16	$K^n+P^n$ (Parts 3, 5)	$\leq F^n$
17	$Q^n$ (Part 7)	$\leq F^n$
18	$K^n+Q^n$ (Part 7)	$\leq F^n$
19	$R^n$ (Parts 1-7)	$= F^n-K^n-L^n-M^n-N^n-P^n-Q^n$
20	$S^n$ (Parts 1-7)	$= R^n/CB1*100$
21	$T^n$ (Part 5)	$\leq E^n$
22	$U^n$ (Parts 1, 5 and 7)	If $S^n \geq 10\%$ then $U^n=R^n-T^n$ , else 0
23	$V^n$ (Parts 1-7)	$\leq F^n$
24	$C^n$ (Part 8)	$\leq B^n/ACB1*100$
25	$D^n$ (Part 8)	$= 1 \diamond 7$
26	$F^n$ (Part 8)	$< B^n$ Part 8

For specific items

1	FSA	$\geq 100000$
2	CTOT1	$= \sum \text{column C (Part 1)}$
3	UTOT1	$= \sum \text{column U (Part 1)}$
4	UPC1	$= \text{UTOT1}/\text{CB1} * 100$
5	P2BTOT	$= \sum \text{column B (Part 2)}$
6	P2CTOT	$= \sum \text{column C (Part 2)}$
7	P2DTOT	$= \sum \text{column D (Part 2)}$
8	P2FTOT	$= \sum \text{column F (Part 2)}$
9	P2GTOT	$= \text{P2FTOT}/\text{CB1} * 100$
10	P2HTOT	$\geq \text{P2FTOT}$
11	P2JTOT	$= \text{P2HTOT}/\text{CB1} * 100$
12	P2KTOT	$= \sum \text{column K (Part 2)}$
13	P2LTOT	$= \sum \text{column L (Part 2)}$
14	P2MTOT	$= \sum \text{column M (Part 2)}$
15	P2NTOT	$= \sum \text{column N (Part 2)}$
16	P2RTOT	$= \sum \text{column R (Part 2)}$
17	P2STOT	$= \text{P2RTOT}/\text{CB1} * 1000$
18	P2UTOT	$= \text{If } \text{P2STOT} \geq 10\%, \text{ then } \text{P2UTOT} = \text{P2RTOT}, \text{ else}$ $0$
19	P2VTOT	$= \sum \text{column V (Part 2)}$
20	CTOT3	$= \sum \text{column C (Part 3)}$
21	UTOT5	$= \sum \text{column U (Part 5)}$
22	UPC5	$= \text{UTOT5}/\text{CB1} * 100$
23	CTOT6	$= \sum \text{column C (Part 6)}$
24	CTOT7	$= \sum \text{column C (Part 7)}$

25	UTOT7	=	$\sum$ column U (Part 7)
26	CP1	=	CTOT1
27	UP1	=	UTOT1
28	CP2	=	P2CTOT
29	UP2	=	P2UTOT
30	CP3	=	CTOT3
31	UP5	=	UTOT5
32	CP6	=	CTOT6
33	CGT	=	CTOT7+CP1+CP2+CP3+CP6
34	UGT	=	UTOT7+UP1+UP2+UP5
35	UPC	=	UGT/CB1*100
36	P8TOT	=	$\sum$ column H (Part 8)
37	CBL	>	0
38	CB1	$\geq$	CBL

### FORM LE3

### ANALYSIS OF LARGE EXPOSURES

### CROSS FORM VALIDATIONS

#### LE3 AND BSD3

Ref	LE3 items		BSD3 items
no			
1	CGT	$\leq$	Appendix A-V 80S
2	P8TOT	=	B120+B130

**(c)'Cell code' version of the Form LE3**

*Private and confidential*



**FORM LE3 - Analysis of Large Exposures**

**Reporting institution** \_\_\_\_\_  
 (Unconsolidated/Solo consolidated/ Consolidated - delete as appropriate)

Reporting date 

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 eg 31 12 2001

**FSA Number \***

		F	S	A	
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Agreed LE capital base at the reporting date (000s) 

<b>CB1</b>
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Date agreed 

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Lowest LE capital base in period (000s) 

<b>CBL</b>
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Please tick if this return is completed in Euros..... 

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Knowingly or recklessly giving the FSA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.1R and SUP 15.6.3R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FSA and to notify the FSA immediately if materially inaccurate information has been provided. SUP 16.3.10R requires an authorised person to submit reports containing all the information required. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the FSA. It should not be assumed that information is known to the FSA merely because it is in the public domain or has previously been disclosed to the FSA or another regulatory body. Any additional information of relevance should be provided by letter direct to the FSA.

I confirm that the information in this form is accurate and complete to the best of my knowledge and belief and that I have read the Guidance Notes to this form.

Signature of authorised signatory: \_\_\_\_\_ Date \_\_\_\_\_

Name: \_\_\_\_\_ Position held: \_\_\_\_\_

*In the event of a query, the FSA or the Bank of England may, in the first instance, contact (block letters please)*

\_\_\_\_\_ Tel No \_\_\_\_\_ Ext \_\_\_\_\_

**Notes on Completion**

- 1 Complete the return quarterly on an unconsolidated/solo-consolidated basis and consolidated basis as at end of March, June, September and December. Institutions wishing to report as at dates which coincide with the financial year end should apply to the FSA for a waiver (see SUP 8).
- 2 For definitions of items, refer to the Guidance Notes for the form. If you have any difficulty in completing this return, please telephone 020 7676 0660.
- 3 Enter amounts to the nearest thousand omitting 000s.
- 4 The form should be returned within **10 business days (14 business days** if submitted electronically) of the reporting date when completed on an unconsolidated/solo-consolidated basis and within **20 business days (24 business days** if submitted electronically) of the reporting date when completed on a consolidated basis. Please address the form to:
 

**The Financial Services Authority**  
**c/o Monetary and Financial Statistics Division**  
**Domestic Banking Statistics (HO-4)**  
**Bank of England**  
**Threadneedle Street**  
**London EC2R 8AH**
- 5 Returns may also be delivered to the Works Gate at the Lothbury entrance of the Bank of England between 9.00am and 5.00pm, Monday to Friday. Envelopes should be clearly addressed as above.

<b>FSA use only</b>	<b>Logged in</b>	<b>Data entered</b>



\* For unconsolidated/solo-consolidated entities, this will be the FSA firm reference number. For consolidated reporters, this will be the FSA firm reference number of the institution on whom the obligation to report has been placed. This box must be filled in by all reporters (SUP 16.3.7R).

PART 1

LARGEST EXPOSURES TO INDIVIDUAL NON-BANK COUNTERPARTIES AND GROUPS OF CLOSELY RELATED

Number of exposures reported in this Section

P1N

Item no	Counterparty (principal counterparty in the case of groups of closely related institutions)	Amount at risk at reporting date	Specific bad debt provisions made against the balance in column B	Eligible collateral held at the reporting date	Exposure at reporting date, after eligible offsets only		Maximum exposure during period	
					Amount	% LECB	Amount	% LECB
					F	G	H	J
1	P1A1	P1B1	P1C1	P1D1	P1F1	P1G1	P1H1	P1J1
2	P1A2	P1B2	P1C2	P1D2	P1F2	P1G2	P1H2	P1J2
3	P1A3	P1B3	P1C3	P1D3	P1F3	P1G3	P1H3	P1J3
4	P1A4	P1B4	P1C4	P1D4	P1F4	P1G4	P1H4	P1J4
5	P1A5	P1B5	P1C5	P1D5	P1F5	P1G5	P1H5	P1J5
6	P1A6	P1B6	P1C6	P1D6	P1F6	P1G6	P1H6	P1J6
7	P1A7	P1B7	P1C7	P1D7	P1F7	P1G7	P1H7	P1J7
8	P1A8	P1B8	P1C8	P1D8	P1F8	P1G8	P1H8	P1J8
9	P1A9	P1B9	P1C9	P1D9	P1F9	P1G9	P1H9	P1J9
10	P1A10	P1B10	P1C10	P1D10	P1F10	P1G10	P1H10	P1J10
11	P1A11	P1B11	P1C11	P1D11	P1F11	P1G11	P1H11	P1J11
12	P1A12	P1B12	P1C12	P1D12	P1F12	P1G12	P1H12	P1J12
13	P1A13	P1B13	P1C13	P1D13	P1F13	P1G13	P1H13	P1J13
14	P1A14	P1B14	P1C14	P1D14	P1F14	P1G14	P1H14	P1J14
15	P1A15	P1B15	P1C15	P1D15	P1F15	P1G15	P1H15	P1J15
16	P1A16	P1B16	P1C16	P1D16	P1F16	P1G16	P1H16	P1J16
17	P1A17	P1B17	P1C17	P1D17	P1F17	P1G17	P1H17	P1J17
18	P1A18	P1B18	P1C18	P1D18	P1F18	P1G18	P1H18	P1J18
19	P1A19	P1B19	P1C19	P1D19	P1F19	P1G19	P1H19	P1J19
20	P1A20	P1B20	P1C20	P1D20	P1F20	P1G20	P1H20	P1J20
21	P1A21	P1B21	P1C21	P1D21	P1F21	P1G21	P1H21	P1J21
22	P1A22	P1B22	P1C22	P1D22	P1F22	P1G22	P1H22	P1J22
23	P1A23	P1B23	P1C23	P1D23	P1F23	P1G23	P1H23	P1J23
24	P1A24	P1B24	P1C24	P1D24	P1F24	P1G24	P1H24	P1J24
25	P1A25	P1B25	P1C25	P1D25	P1F25	P1G25	P1H25	P1J25
...	P1A...	P1B...	P1C...	P1D...	P1F...	P1G...	P1H...	P1J...

TOT1  
PC1

Total to Part 7

CTOT1

.....

NON-BANK COUNTERPARTIES

Item no cont'd	Covered by guarantees at the reporting date	Exposure at reporting date, after offsets and concessions		Amount included in the clustering ratio	Amount subject to 'Soft' Limits (also report in Part 8)
		Amount	% LECB		
		R	S		
K				U	V
1	P1K1	P1R1	P1S1	P1U1	P1V1
2	P1K2	P1R2	P1S2	P1U2	P1V2
3	P1K3	P1R3	P1S3	P1U3	P1V3
4	P1K4	P1R4	P1S4	P1U4	P1V4
5	P1K5	P1R5	P1S5	P1U5	P1V5
6	P1K6	P1R6	P1S6	P1U6	P1V6
7	P1K7	P1R7	P1S7	P1U7	P1V7
8	P1K8	P1R8	P1S8	P1U8	P1V8
9	P1K9	P1R9	P1S9	P1U9	P1V9
10	P1K10	P1R10	P1S10	P1U10	P1V10
11	P1K11	P1R11	P1S11	P1U11	P1V11
12	P1K12	P1R12	P1S12	P1U12	P1V12
13	P1K13	P1R13	P1S13	P1U13	P1V13
14	P1K14	P1R14	P1S14	P1U14	P1V14
15	P1K15	P1R15	P1S15	P1U15	P1V15
16	P1K16	P1R16	P1S16	P1U16	P1V16
17	P1K17	P1R17	P1S17	P1U17	P1V17
18	P1K18	P1R18	P1S18	P1U18	P1V18
19	P1K19	P1R19	P1S19	P1U19	P1V19
20	P1K20	P1R20	P1S20	P1U20	P1V20
21	P1K21	P1R21	P1S21	P1U21	P1V21
22	P1K22	P1R22	P1S22	P1U22	P1V22
23	P1K23	P1R23	P1S23	P1U23	P1V23
24	P1K24	P1R24	P1S24	P1U24	P1V24
25	P1K25	P1R25	P1S25	P1U25	P1V25
...	P1K...	P1R...	P1S...	P1U...	P1V...

TOT1	.....	Total to Part 7	UTOT1
PC1	.....	% LECB	UPC1

PART 2

LARGEST EXPOSURES TO INDIVIDUAL COUNTERPARTIES AND GROUPS OF CLOSELY RELATED

Number of exposures reported in this Section

P2N

Item no	Individual counterparties (but see reporting definitions) for this Part of the report	Amounts at risk at reporting date	Specific bad debt provisions made at reporting date against the balance in column B	Eligible collateral held at the reporting date	Exposure at reporting date, after eligible offsets only		Maximum exposure during period	
					Amount	% LECB	Amount	% LECB
	A	B	C	D	F	G	H	J
1	P2A1*	P2B1	P2C1	P2D1	P2F1			
2	P2A2	P2B2	P2C2	P2D2	P2F2			
3	P2A3	P2B3	P2C3	P2D3	P2F3			
4	P2A4	P2B4	P2C4	P2D4	P2F4			
5	P2A5	P2B5	P2C5	P2D5	P2F5			
6	P2A6	P2B6	P2C6	P2D6	P2F6			
7	P2A7	P2B7	P2C7	P2D7	P2F7			
8	P2A8	P2B8	P2C8	P2D8	P2F8			
9	P2A9	P2B9	P2C9	P2D9	P2F9			
10	P2A10	P2B10	P2C10	P2D10	P2F10			
11	P2A11	P2B11	P2C11	P2D11	P2F11			
12	P2A12	P2B12	P2C12	P2D12	P2F12			
13	P2A13	P2B13	P2C13	P2D13	P2F13			
14	P2A14	P2B14	P2C14	P2D14	P2F14			
15	P2A15	P2B15	P2C15	P2D15	P2F15			
16	P2A16	P2B16	P2C16	P2D16	P2F16			
17	P2A17	P2B17	P2C17	P2D17	P2F17			
18	P2A18	P2B18	P2C18	P2D18	P2F18			
19	P2A19	P2B19	P2C19	P2D19	P2F19			
20	P2A20	P2B20	P2C20	P2D20	P2F20			
<b>TOTAL</b>		<b>P2BTOT</b>	<b>P2CTOT</b>	<b>P2DTOT</b>	<b>P2FTOT</b>	<b>P2GTOT</b>	<b>P2HTOT</b>	<b>P2JTOT</b>

\* This line should contain the aggregate of exposures which individually are less than 2.5% of LECB. If no connected exposures are reported in this Part, leave blank: otherwise the line should contain figures, even zeros.

COUNTERPARTIES CONNECTED TO THE REPORTING INSTITUTION

Item no cont'd	Covered by guarantees at the reporting date	Amount exempted under a group Treasury Concession	Amount exempted under a Reverse Treasury Concession	Amount exempted under a Central Risk Management Concession	Exposure at reporting date, after offsets and concessions		Amount included in the clustering ratio	Amount subject to 'Soft' Limits (also report in Part 8)
					Amount	% LECB		
					R	S		
K	L	M	N			U	V	
1	P2K1	P2L1	P2M1	P2N1	P2R1			P2V1
2	P2K2	P2L2	P2M2	P2N2	P2R2			P2V2
3	P2K3	P2L3	P2M3	P2N3	P2R3			P2V3
4	P2K4	P2L4	P2M4	P2N4	P2R4			P2V4
5	P2K5	P2L5	P2M5	P2N5	P2R5			P2V5
6	P2K6	P2L6	P2M6	P2N6	P2R6			P2V6
7	P2K7	P2L7	P2M7	P2N7	P2R7			P2V7
8	P2K8	P2L8	P2M8	P2N8	P2R8			P2V8
9	P2K9	P2L9	P2M9	P2N9	P2R9			P2V9
10	P2K10	P2L10	P2M10	P2N10	P2R10			P2V10
11	P2K11	P2L11	P2M11	P2N11	P2R11			P2V11
12	P2K12	P2L12	P2M12	P2N12	P2R12			P2V12
13	P2K13	P2L13	P2M13	P2N13	P2R13			P2V13
14	P2K14	P2L14	P2M14	P2N14	P2R14			P2V14
15	P2K15	P2L15	P2M15	P2N15	P2R15			P2V15
16	P2K16	P2L16	P2M16	P2N16	P2R16			P2V16
17	P2K17	P2L17	P2M17	P2N17	P2R17			P2V17
18	P2K18	P2L18	P2M18	P2N18	P2R18			P2V18
19	P2K19	P2L19	P2M19	P2N19	P2R19			P2V19
20	P2K20	P2L20	P2M20	P2N20	P2R20			P2V20
TOTAL	P2KTOT	P2LTOT	P2MTOT	P2NTOT	P2RTOT	P2STOT	P2UTOT	P2VTOT

PART 3

LARGEST EXPOSURES TO BANKS, BUILDING SOCIETIES, RECOGNISED INVESTMENT FIRMS, RECOGNISED

Number of exposures reported in this Section P3N

Item no	Counterparty (principal counterparty in the case of groups of closely related institutions)	Amount at risk at reporting date	Specific bad debt provisions made against the balance in column B	Eligible collateral held at the reporting date	Exposures to non-bank counterparties closely related to counterparty in Column A (if separately identifiable and reportable in Part 1)	Exposure at reporting date, after eligible offsets and including related exposures		Maximum exposure during period	
						Amount	% LECB	Amount	% LECB
	A	B	C	D	E	F	G	H	J
1	P3A1	P3B1	P3C1	P3D1	P3E1	P3F1	P3G1	P3H1	P3J1
2	P3A2	P3B2	P3C2	P3D2	P3E2	P3F2	P3G2	P3H2	P3J2
3	P3A3	P3B3	P3C3	P3D3	P3E3	P3F3	P3G3	P3H3	P3J3
4	P3A4	P3B4	P3C4	P3D4	P3E4	P3F4	P3G4	P3H4	P3J4
5	P3A5	P3B5	P3C5	P3D5	P3E5	P3F5	P3G5	P3H5	P3J5
6	P3A6	P3B6	P3C6	P3D6	P3E6	P3F6	P3G6	P3H6	P3J6
7	P3A7	P3B7	P3C7	P3D7	P3E7	P3F7	P3G7	P3H7	P3J7
8	P3A8	P3B8	P3C8	P3D8	P3E8	P3F8	P3G8	P3H8	P3J8
9	P3A9	P3B9	P3C9	P3D9	P3E9	P3F9	P3G9	P3H9	P3J9
10	P3A10	P3B10	P3C10	P3D10	P3E10	P3F10	P3G10	P3H10	P3J10
11	P3A11	P3B11	P3C11	P3D11	P3E11	P3F11	P3G11	P3H11	P3J11
12	P3A12	P3B12	P3C12	P3D12	P3E12	P3F12	P3G12	P3H12	P3J12
13	P3A13	P3B13	P3C13	P3D13	P3E13	P3F13	P3G13	P3H13	P3J13
14	P3A14	P3B14	P3C14	P3D14	P3E14	P3F14	P3G14	P3H14	P3J14
15	P3A15	P3B15	P3C15	P3D15	P3E15	P3F15	P3G15	P3H15	P3J15
16	P3A16	P3B16	P3C16	P3D16	P3E16	P3F16	P3G16	P3H16	P3J16
17	P3A17	P3B17	P3C17	P3D17	P3E17	P3F17	P3G17	P3H17	P3J17
18	P3A18	P3B18	P3C18	P3D18	P3E18	P3F18	P3G18	P3H18	P3J18
19	P3A19	P3B19	P3C19	P3D19	P3E19	P3F19	P3G19	P3H19	P3J19
20	P3A20	P3B20	P3C20	P3D20	P3E20	P3F20	P3G20	P3H20	P3J20
21	P3A21	P3B21	P3C21	P3D21	P3E21	P3F21	P3G21	P3H21	P3J21
22	P3A22	P3B22	P3C22	P3D22	P3E22	P3F22	P3G22	P3H22	P3J22
23	P3A23	P3B23	P3C23	P3D23	P3E23	P3F23	P3G23	P3H23	P3J23
24	P3A24	P3B24	P3C24	P3D24	P3E24	P3F24	P3G24	P3H24	P3J24
25	P3A25	P3B25	P3C25	P3D25	P3E25	P3F25	P3G25	P3H25	P3J25
...	P3A...	P3B...	P3C...	P3D...	P3E...	P3F...	P3G...	P3H...	P3J...

TOT1

Total to Part 7 CTOT3

CLEARING HOUSES AND RECOGNISED EXCHANGES - ALL MATURITIES

Item no cont'd	Covered by guarantees at the reporting date	Amount subject to 1- 3 year derivatives concession (80% thereof)	Exposure at reporting date, after offsets and concessions		Amount subject to 'Soft' Limits (also report in Part 8)	
	K		P	Amount		% LECB
				R		S
1	P3K1	P3P1	P3R1	P3S1	P3V1	
2	P3K2	P3P2	P3R2	P3S2	P3V2	
3	P3K3	P3P3	P3R3	P3S3	P3V3	
4	P3K4	P3P4	P3R4	P3S4	P3V4	
5	P3K5	P3P5	P3R5	P3S5	P3V5	
6	P3K6	P3P6	P3R6	P3S6	P3V6	
7	P3K7	P3P7	P3R7	P3S7	P3V7	
8	P3K8	P3P8	P3R8	P3S8	P3V8	
9	P3K9	P3P9	P3R9	P3S9	P3V9	
10	P3K10	P3P10	P3R10	P3S10	P3V10	
11	P3K11	P3P11	P3R11	P3S11	P3V11	
12	P3K12	P3P12	P3R12	P3S12	P3V12	
13	P3K13	P3P13	P3R13	P3S13	P3V13	
14	P3K14	P3P14	P3R14	P3S14	P3V14	
15	P3K15	P3P15	P3R15	P3S15	P3V15	
16	P3K16	P3P16	P3R16	P3S16	P3V16	
17	P3K17	P3P17	P3R17	P3S17	P3V17	
18	P3K18	P3P18	P3R18	P3S18	P3V18	
19	P3K19	P3P19	P3R19	P3S19	P3V19	
20	P3K20	P3P20	P3R20	P3S20	P3V20	
21	P3K21	P3P21	P3R21	P3S21	P3V21	
22	P3K22	P3P22	P3R22	P3S22	P3V22	
23	P3K23	P3P23	P3R23	P3S23	P3V23	
24	P3K24	P3P24	P3R24	P3S24	P3V24	
25	P3K25	P3P25	P3R25	P3S25	P3V25	
...	P3K...	P3P...	P3R...	P3S...	P3V...	

PART 4

LARGEST EXPOSURES TO BANKS, BUILDING SOCIETIES, RECOGNISED INVESTMENT FIRMS, RECOGNISED

Number of exposures reported in this Section P4N

Item no	Counterparty (principal counterparty in the case of groups of closely related institutions)	Amounts at risk at reporting date	Specific bad debt provisions made at reporting date against the balance in column B	Eligible collateral held at the reporting date	Exposures to non-bank counterparties closely related to counterparty in Column A (if separately identifiable and reportable in Part 1)	Exposure at reporting date, after eligible offsets and including related exposures	
						Amount	% LECB
	A	B	C	D	E	F	G
1	P4A1	P4B1	P4C1	P4D1	P4E1	P4F1	P4G1
2	P4A2	P4B2	P4C2	P4D2	P4E2	P4F2	P4G2
3	P4A3	P4B3	P4C3	P4D3	P4E3	P4F3	P4G3
4	P4A4	P4B4	P4C4	P4D4	P4E4	P4F4	P4G4
5	P4A5	P4B5	P4C5	P4D5	P4E5	P4F5	P4G5
6	P4A6	P4B6	P4C6	P4D6	P4E6	P4F6	P4G6
7	P4A7	P4B7	P4C7	P4D7	P4E7	P4F7	P4G7
8	P4A8	P4B8	P4C8	P4D8	P4E8	P4F8	P4G8
9	P4A9	P4B9	P4C9	P4D9	P4E9	P4F9	P4G9
10	P4A10	P4B10	P4C10	P4D10	P4E10	P4F10	P4G10
11	P4A11	P4B11	P4C11	P4D11	P4E11	P4F11	P4G11
12	P4A12	P4B12	P4C12	P4D12	P4E12	P4F12	P4G12
13	P4A13	P4B13	P4C13	P4D13	P4E13	P4F13	P4G13
14	P4A14	P4B14	P4C14	P4D14	P4E14	P4F14	P4G14
15	P4A15	P4B15	P4C15	P4D15	P4E15	P4F15	P4G15
16	P4A16	P4B16	P4C16	P4D16	P4E16	P4F16	P4G16
17	P4A17	P4B17	P4C17	P4D17	P4E17	P4F17	P4G17
18	P4A18	P4B18	P4C18	P4D18	P4E18	P4F18	P4G18
19	P4A19	P4B19	P4C19	P4D19	P4E19	P4F19	P4G19
20	P4A20	P4B20	P4C20	P4D20	P4E20	P4F20	P4G20
21	P4A21	P4B21	P4C21	P4D21	P4E21	P4F21	P4G21
22	P4A22	P4B22	P4C22	P4D22	P4E22	P4F22	P4G22
23	P4A23	P4B23	P4C23	P4D23	P4E23	P4F23	P4G23
24	P4A24	P4B24	P4C24	P4D24	P4E24	P4F24	P4G24
25	P4A25	P4B25	P4C25	P4D25	P4E25	P4F25	P4G25
...	P4A...	P4B...	P4C...	P4D...	P4E...	P4F...	P4G...



CLEARING HOUSES AND RECOGNISED EXCHANGES WITH A MATURITY OF 1 YEAR OR LESS

Item no cont'd	Covered by guarantees at the reporting date	Exposure at reporting date, after offsets and concessions		Amount subject to 'Soft' Limits (also report in Part 8)
		Amount	% LECB	
		R	S	
K				V
1	P4K1	P4R1	P4S1	P4V1
2	P4K2	P4R2	P4S2	P4V2
3	P4K3	P4R3	P4S3	P4V3
4	P4K4	P4R4	P4S4	P4V4
5	P4K5	P4R5	P4S5	P4V5
6	P4K6	P4R6	P4S6	P4V6
7	P4K7	P4R7	P4S7	P4V7
8	P4K8	P4R8	P4S8	P4V8
9	P4K9	P4R9	P4S9	P4V9
10	P4K10	P4R10	P4S10	P4V10
11	P4K11	P4R11	P4S11	P4V11
12	P4K12	P4R12	P4S12	P4V12
13	P4K13	P4R13	P4S13	P4V13
14	P4K14	P4R14	P4S14	P4V14
15	P4K15	P4R15	P4S15	P4V15
16	P4K16	P4R16	P4S16	P4V16
17	P4K17	P4R17	P4S17	P4V17
18	P4K18	P4R18	P4S18	P4V18
19	P4K19	P4R19	P4S19	P4V19
20	P4K20	P4R20	P4S20	P4V20
21	P4K21	P4R21	P4S21	P4V21
22	P4K22	P4R22	P4S22	P4V22
23	P4K23	P4R23	P4S23	P4V23
24	P4K24	P4R24	P4S24	P4V24
25	P4K25	P4R25	P4S25	P4V25
...	P4K...	P4R...	P4S...	P4V...

PART 5

LARGEST EXPOSURES TO BANKS, BUILDING SOCIETIES, RECOGNISED INVESTMENT FIRMS, RECOGNISED

Number of exposures reported in this Section P5N

Item no	Counterparty (principal counterparty in the case of groups of closely related institutions)	Amounts at risk at reporting date	Specific bad debt provisions made at reporting date against the balance in column B	Eligible collateral held at the reporting date	Exposures to non-bank counterparty closely related to counterparty in Column A (if separately identifiable and reportable in Part 1)	Exposure at reporting date, after offsets and including related exposures	
						Amount	% LECB
	A	B	C	D	E	F	G
1	P5A1	P5B1	P5C1	P5D1	P5E1	P5F1	P5G1
2	P5A2	P5B2	P5C2	P5D2	P5E2	P5F2	P5G2
3	P5A3	P5B3	P5C3	P5D3	P5E3	P5F3	P5G3
4	P5A4	P5B4	P5C4	P5D4	P5E4	P5F4	P5G4
5	P5A5	P5B5	P5C5	P5D5	P5E5	P5F5	P5G5
6	P5A6	P5B6	P5C6	P5D6	P5E6	P5F6	P5G6
7	P5A7	P5B7	P5C7	P5D7	P5E7	P5F7	P5G7
8	P5A8	P5B8	P5C8	P5D8	P5E8	P5F8	P5G8
9	P5A9	P5B9	P5C9	P5D9	P5E9	P5F9	P5G9
10	P5A10	P5B10	P5C10	P5D10	P5E10	P5F10	P5G10
11	P5A11	P5B11	P5C11	P5D11	P5E11	P5F11	P5G11
12	P5A12	P5B12	P5C12	P5D12	P5E12	P5F12	P5G12
13	P5A13	P5B13	P5C13	P5D13	P5E13	P5F13	P5G13
14	P5A14	P5B14	P5C14	P5D14	P5E14	P5F14	P5G14
15	P5A15	P5B15	P5C15	P5D15	P5E15	P5F15	P5G15
16	P5A16	P5B16	P5C16	P5D16	P5E16	P5F16	P5G16
17	P5A17	P5B17	P5C17	P5D17	P5E17	P5F17	P5G17
18	P5A18	P5B18	P5C18	P5D18	P5E18	P5F18	P5G18
19	P5A19	P5B19	P5C19	P5D19	P5E19	P5F19	P5G19
20	P5A20	P5B20	P5C20	P5D20	P5E20	P5F20	P5G20
21	P5A21	P5B21	P5C21	P5D21	P5E21	P5F21	P5G21
22	P5A22	P5B22	P5C22	P5D22	P5E22	P5F22	P5G22
23	P5A23	P5B23	P5C23	P5D23	P5E23	P5F23	P5G23
24	P5A24	P5B24	P5C24	P5D24	P5E24	P5F24	P5G24
25	P5A25	P5B25	P5C25	P5D25	P5E25	P5F25	P5G25
...	P5A...	P5B...	P5C...	P5D...	P5E...	P5F...	P5G...

TOT5	.....
PC5	.....

CLEARING HOUSES AND RECOGNISED EXCHANGES WITH A MATURITY OF OVER 1 YEAR

Item no cont'd	Covered by guarantees at the reporting date	Amount subject to 1- 3 year derivatives concession (80% thereof)	Exposure at reporting date, after offsets and concessions		Amount reported in Column U, Part 1, for non- bank counterparty related to counterparty in Column A	Amount included in clustering ratio	Amount subject to 'Soft' Limits (also report in Part 8)
			Amount	% LECB			
			R	S			
1	P5K1	P5P1	P5R1	P5S1	P5T1	P5U1	P5V1
2	P5K2	P5P2	P5R2	P5S2	P5T2	P5U2	P5V2
3	P5K3	P5P3	P5R3	P5S3	P5T3	P5U3	P5V3
4	P5K4	P5P4	P5R4	P5S4	P5T4	P5U4	P5V4
5	P5K5	P5P5	P5R5	P5S5	P5T5	P5U5	P5V5
6	P5K6	P5P6	P5R6	P5S6	P5T6	P5U6	P5V6
7	P5K7	P5P7	P5R7	P5S7	P5T7	P5U7	P5V7
8	P5K8	P5P8	P5R8	P5S8	P5T8	P5U8	P5V8
9	P5K9	P5P9	P5R9	P5S9	P5T9	P5U9	P5V9
10	P5K10	P5P10	P5R10	P5S10	P5T10	P5U10	P5V10
11	P5K11	P5P11	P5R11	P5S11	P5T11	P5U11	P5V11
12	P5K12	P5P12	P5R12	P5S12	P5T12	P5U12	P5V12
13	P5K13	P5P13	P5R13	P5S13	P5T13	P5U13	P5V13
14	P5K14	P5P14	P5R14	P5S14	P5T14	P5U14	P5V14
15	P5K15	P5P15	P5R15	P5S15	P5T15	P5U15	P5V15
16	P5K16	P5P16	P5R16	P5S16	P5T16	P5U16	P5V16
17	P5K17	P5P17	P5R17	P5S17	P5T17	P5U17	P5V17
18	P5K18	P5P18	P5R18	P5S18	P5T18	P5U18	P5V18
19	P5K19	P5P19	P5R19	P5S19	P5T19	P5U19	P5V19
20	P5K20	P5P20	P5R20	P5S20	P5T20	P5U20	P5V20
21	P5K21	P5P21	P5R21	P5S21	P5T21	P5U21	P5V21
22	P5K22	P5P22	P5R22	P5S22	P5T22	P5U22	P5V22
23	P5K23	P5P23	P5R23	P5S23	P5T23	P5U23	P5V23
24	P5K24	P5P24	P5R24	P5S24	P5T24	P5U24	P5V24
25	P5K25	P5P25	P5R25	P5S25	P5T25	P5U25	P5V25
...	P5K...	P5P...	P5R...	P5S...	P5T...	P5U...	P5V...

TOT5	.....	Total to Part 7	UTOT5
PC5	.....	% LECB	UPC5

PART 6

LARGEST EXPOSURES TO ZONE A CENTRAL GOVERNMENTS AND CENTRAL BANKS

Number of exposures reported in this Section P6N

Item no	Counterparty (principal counterparty in the case of groups of closely related institutions)	Amounts at risk at reporting date	Specific bad debt provisions made at reporting date against the balance in column B	Exposure at reporting date, after eligible offsets only		Maximum exposure during period		Amount subject to 'Soft' Limits (also report in Part 8)	
				Amount	% LECB	Amount	% LECB		
				F	G	H	J		
	A	B	C						V
1	P6A1	P6B1	P6C1	P6F1	P6G1	P6H1	P6J1	P6K1	
2	P6A2	P6B2	P6C2	P6F2	P6G2	P6H2	P6J2	P6K2	
3	P6A3	P6B3	P6C3	P6F3	P6G3	P6H3	P6J3	P6K3	
4	P6A4	P6B4	P6C4	P6F4	P6G4	P6H4	P6J4	P6K4	
5	P6A5	P6B5	P6C5	P6F5	P6G5	P6H5	P6J5	P6K5	
6	P6A6	P6B6	P6C6	P6F6	P6G6	P6H6	P6J6	P6K6	
7	P6A7	P6B7	P6C7	P6F7	P6G7	P6H7	P6J7	P6K7	
8	P6A8	P6B8	P6C8	P6F8	P6G8	P6H8	P6J8	P6K8	
9	P6A9	P6B9	P6C9	P6F9	P6G9	P6H9	P6J9	P6K9	
10	P6A10	P6B10	P6C10	P6F10	P6G10	P6H10	P6J10	P6K10	
11	P6A11	P6B11	P6C11	P6F11	P6G11	P6H11	P6J11	P6K11	
12	P6A12	P6B12	P6C12	P6F12	P6G12	P6H12	P6J12	P6K12	
13	P6A13	P6B13	P6C13	P6F13	P6G13	P6H13	P6J13	P6K13	
14	P6A14	P6B14	P6C14	P6F14	P6G14	P6H14	P6J14	P6K14	
15	P6A15	P6B15	P6C15	P6F15	P6G15	P6H15	P6J15	P6K15	
16	P6A16	P6B16	P6C16	P6F16	P6G16	P6H16	P6J16	P6K16	
17	P6A17	P6B17	P6C17	P6F17	P6G17	P6H17	P6J17	P6K17	
18	P6A18	P6B18	P6C18	P6F18	P6G18	P6H18	P6J18	P6K18	
19	P6A19	P6B19	P6C19	P6F19	P6G19	P6H19	P6J19	P6K19	
20	P6A20	P6B20	P6C20	P6F20	P6G20	P6H20	P6J20	P6K20	
21	P6A21	P6B21	P6C21	P6F21	P6G21	P6H21	P6J21	P6K21	
22	P6A22	P6B22	P6C22	P6F22	P6G22	P6H22	P6J22	P6K22	
23	P6A23	P6B23	P6C23	P6F23	P6G23	P6H23	P6J23	P6K23	
24	P6A24	P6B24	P6C24	P6F24	P6G24	P6H24	P6J24	P6K24	
25	P6A25	P6B25	P6C25	P6F25	P6G25	P6H25	P6J25	P6K25	
...	P6A...	P6B...	P6C...	P6F...	P6G...	P6H...	P6J...	P6K...	

TOT6

Total to Part 7 CTOT6

PART 7

LARGEST EXPOSURES TO ZONE B CENTRAL GOVERNMENTS AND CENTRAL BANKS

Number of exposures reported in this Section

P7N

Item no	Counterparty (principal counterparty in the case of groups of closely related institutions)	Amounts at risk at reporting date	Specific bad debt provisions made at reporting date against the balance in column B	Eligible collateral held at the reporting date	Exposure at reporting date, after eligible offsets only		Maximum exposure during period	
					Amount	% LECB	Amount	% LECB
	A	B	C	D	F	G	H	J
1	P7A1	P7B1	P7C1	P7D1	P7F1	P7G1	P7H1	P7J1
2	P7A2	P7B2	P7C2	P7D2	P7F2	P7G2	P7H2	P7J2
3	P7A3	P7B3	P7C3	P7D3	P7F3	P7G3	P7H3	P7J3
4	P7A4	P7B4	P7C4	P7D4	P7F4	P7G4	P7H4	P7J4
5	P7A5	P7B5	P7C5	P7D5	P7F5	P7G5	P7H5	P7J5
6	P7A6	P7B6	P7C6	P7D6	P7F6	P7G6	P7H6	P7J6
7	P7A7	P7B7	P7C7	P7D7	P7F7	P7G7	P7H7	P7J7
8	P7A8	P7B8	P7C8	P7D8	P7F8	P7G8	P7H8	P7J8
9	P7A9	P7B9	P7C9	P7D9	P7F9	P7G9	P7H9	P7J9
10	P7A10	P7B10	P7C10	P7D10	P7F10	P7G10	P7H10	P7J10
11	P7A11	P7B11	P7C11	P7D11	P7F11	P7G11	P7H11	P7J11
12	P7A12	P7B12	P7C12	P7D12	P7F12	P7G12	P7H12	P7J12
13	P7A13	P7B13	P7C13	P7D13	P7F13	P7G13	P7H13	P7J13
14	P7A14	P7B14	P7C14	P7D14	P7F14	P7G14	P7H14	P7J14
15	P7A15	P7B15	P7C15	P7D15	P7F15	P7G15	P7H15	P7J15
16	P7A16	P7B16	P7C16	P7D16	P7F16	P7G16	P7H16	P7J16
17	P7A17	P7B17	P7C17	P7D17	P7F17	P7G17	P7H17	P7J17
18	P7A18	P7B18	P7C18	P7D18	P7F18	P7G18	P7H18	P7J18
19	P7A19	P7B19	P7C19	P7D19	P7F19	P7G19	P7H19	P7J19
20	P7A20	P7B20	P7C20	P7D20	P7F20	P7G20	P7H20	P7J20
21	P7A21	P7B21	P7C21	P7D21	P7F21	P7G21	P7H21	P7J21
22	P7A22	P7B22	P7C22	P7D22	P7F22	P7G22	P7H22	P7J22
23	P7A23	P7B23	P7C23	P7D23	P7F23	P7G23	P7H23	P7J23
24	P7A24	P7B24	P7C24	P7D24	P7F24	P7G24	P7H24	P7J24
25	P7A25	P7B25	P7C25	P7D25	P7F25	P7G25	P7H25	P7J25
...	P7A...	P7B...	P7C...	P7D...	P7F...	P7G...	P7H...	P7J...
TOT7	Total of Part 7			CTOT7				
TOT1	From Part 1			CP1				
TOT2	From Part 2			CP2				
TOT3	From Part 3			CP3				
TOT5								
TOT6	From Part 6			CP6				
GT	Grand Total			CGT				
PC								

Item no cont'd	Covered by guarantees at the reporting date	Amount denom- inated in local currency and funded by liabilities in the same currency	Exposure at reporting date, after offsets and concessions		Amount included in the clustering ratio	Amount subject to 'Soft' Limits (also report in Part 8)
			Amount	% LECB		
	K	Q	R	S	U	V
1	P7K1	P7Q1	P7R1	P7S1	P7U1	P7V1
2	P7K2	P7Q2	P7R2	P7S2	P7U2	P7V2
3	P7K3	P7Q3	P7R3	P7S3	P7U3	P7V3
4	P7K4	P7Q4	P7R4	P7S4	P7U4	P7V4
5	P7K5	P7Q5	P7R5	P7S5	P7U5	P7V5
6	P7K6	P7Q6	P7R6	P7S6	P7U6	P7V6
7	P7K7	P7Q7	P7R7	P7S7	P7U7	P7V7
8	P7K8	P7Q8	P7R8	P7S8	P7U8	P7V8
9	P7K9	P7Q9	P7R9	P7S9	P7U9	P7V9
10	P7K10	P7Q10	P7R10	P7S10	P7U10	P7V10
11	P7K11	P7Q11	P7R11	P7S11	P7U11	P7V11
12	P7K12	P7Q12	P7R12	P7S12	P7U12	P7V12
13	P7K13	P7Q13	P7R13	P7S13	P7U13	P7V13
14	P7K14	P7Q14	P7R14	P7S14	P7U14	P7V14
15	P7K15	P7Q15	P7R15	P7S15	P7U15	P7V15
16	P7K16	P7Q16	P7R16	P7S16	P7U16	P7V16
17	P7K17	P7Q17	P7R17	P7S17	P7U17	P7V17
18	P7K18	P7Q18	P7R18	P7S18	P7U18	P7V18
19	P7K19	P7Q19	P7R19	P7S19	P7U19	P7V19
20	P7K20	P7Q20	P7R20	P7S20	P7U20	P7V20
21	P7K21	P7Q21	P7R21	P7S21	P7U21	P7V21
22	P7K22	P7Q22	P7R22	P7S22	P7U22	P7V22
23	P7K23	P7Q23	P7R23	P7S23	P7U23	P7V23
24	P7K24	P7Q24	P7R24	P7S24	P7U24	P7V24
25	P7K25	P7Q25	P7R25	P7S25	P7U25	P7V25
...	P7K...	P7Q...	P7R...	P7S...	P7U...	P7V...
TOT7	Total of Part 7				UTOT7	
TOT1	From Part 1				UP1	
TOT2	From Part 2				UP2	
TOT5	From Part 5				UP5	
GT	Grand Total				UGT	
PC	% LECB				UPC	

PART 8  
EXPOSURES SUBJECT TO SOFT LIMITS

Adjusted capital base (from Item B110 in Form BSD3, Section B)

ACB1

Date agreed

Number of exposures reported in this section

P8N

Item no	Issuer by individual exposure					Excess over adjusted capital base		Specific risk charge
	Counterparty	Total exposure at reporting date	% of adjusted capital base	Reported in which Part of Form	Exposure number in that Part	Amount	Agreed liimit (% of adjusted capital base)	(To agree with Form BSD3)
	A	B	C	D	E	F	G	H
1	P8A1	P8B1	P8C1	P8D1	P8E1	P8F1	P8G1	P8H1
2	P8A2	P8B2	P8C2	P8D2	P8E2	P8F2	P8G2	P8H2
3	P8A3	P8B3	P8C3	P8D3	P8E3	P8F3	P8G3	P8H3
4	P8A4	P8B4	P8C4	P8D4	P8E4	P8F4	P8G4	P8H4
5	P8A5	P8B5	P8C5	P8D5	P8E5	P8F5	P8G5	P8H5
6	P8A6	P8B6	P8C6	P8D6	P8E6	P8F6	P8G6	P8H6
7	P8A7	P8B7	P8C7	P8D7	P8E7	P8F7	P8G7	P8H7
8	P8A8	P8B8	P8C8	P8D8	P8E8	P8F8	P8G8	P8H8
9	P8A9	P8B9	P8C9	P8D9	P8E9	P8F9	P8G9	P8H9
10	P8A10	P8B10	P8C10	P8D10	P8E10	P8F10	P8G10	P8H10
11	P8A11	P8B11	P8C11	P8D11	P8E11	P8F11	P8G11	P8H11
12	P8A12	P8B12	P8C12	P8D12	P8E12	P8F12	P8G12	P8H12
13	P8A13	P8B13	P8C13	P8D13	P8E13	P8F13	P8G13	P8H13
14	P8A14	P8B14	P8C14	P8D14	P8E14	P8F14	P8G14	P8H14
15	P8A15	P8B15	P8C15	P8D15	P8E15	P8F15	P8G15	P8H15
16	P8A16	P8B16	P8C16	P8D16	P8E16	P8F16	P8G16	P8H16
17	P8A17	P8B17	P8C17	P8D17	P8E17	P8F17	P8G17	P8H17
18	P8A18	P8B18	P8C18	P8D18	P8E18	P8F18	P8G18	P8H18
19	P8A19	P8B19	P8C19	P8D19	P8E19	P8F19	P8G19	P8H19
20	P8A20	P8B20	P8C20	P8D20	P8E20	P8F20	P8G20	P8H20
21	P8A21	P8B21	P8C21	P8D21	P8E21	P8F21	P8G21	P8H21
22	P8A22	P8B22	P8C22	P8D22	P8E22	P8F22	P8G22	P8H22
23	P8A23	P8B23	P8C23	P8D23	P8E23	P8F23	P8G23	P8H23
24	P8A24	P8B24	P8C24	P8D24	P8E24	P8F24	P8G24	P8H24
25	P8A25	P8B25	P8C25	P8D25	P8E25	P8F25	P8G25	P8H25
...	P8A...	P8B...	P8C...	P8D...	P8E...	P8F...	P8G...	P8H...

TOT

Total Specific Risk Charge

P8TOT

Schedule 2

Notification requirements

...

2 Table

<b>Handbook reference</b>	<b>Matter to be notified</b>	<b>Contents of notification</b>	<b>Trigger event</b>	<b>Time allowed</b>
...				
<i>SUP 16.7.7 R to SUP 16.7.15 R</i>	Reporting - financial reports - <i>UK bank</i>	Analysis of large exposures (Unconsolidated, solo consolidated) LE2 <u>or</u> <u>LE3</u>	Quarterly....	10 <i>business days</i> after quarter end ( <u>14 <i>business days</i> if LE3 submitted electronically</u> )
<i>SUP 16.7.7 R to SUP 16.7.15 R</i>	Reporting - financial reports - <i>UK bank</i>	Analysis of large exposures (Consolidated) LE2 <u>or</u> <u>LE3</u>  ...	Quarterly....	20 <i>business days</i> after quarter end ( <u>24 <i>business days</i> if LE3 submitted electronically</u> )
...				





## Annex B

### Amendments to the Interim Prudential sourcebook for banks

In this Annex, underlining indicates new text and striking through indicates deleted text.

LE: Section1: Page 1

#### LARGE EXPOSURES

##### 1 INTRODUCTION

###### 1.1 Legal sources

1 This chapter which sets out the FSA's policy on a bank's large exposures ...

In summary these require:

...

iii) a UK bank to notify the FSA in cases where it:

a) has entered into an exposure which equals or exceeds 10% of its capital

...

2 The Banking Consolidation Directive (formerly The Large Exposures Directive, 'LED' – 92/121/EEC), applying to deposit-taking credit institutions (that is "full credit institutions" within the meaning of the Glossary) places an explicit ('hard') limit of 25% of capital on exposures to an individual counterparty (or a group of related counterparties) and an explicit limit of 800% of capital on the aggregate of non-exempt exposures which equal or exceed 10% of capital. Certain exposures are exempt from these limits.

...

...

3.1 Main features of the policy

### 3.1.1 *Limits and notification requirements*

...

4 A bank should post-notify the FSA of all exposures ~~over which equal or~~ exceed 10% of its large exposures capital base on a quarterly basis using either the LE2\_ or LE3 return.

5 A bank should limit the total of its exposures, other than its exempt exposures, to individual counterparties or groups of closely related counterparties equalling or exceeding 10% of its large exposures capital base to a maximum of 800% of its large exposures capital base. Should a bank wish to exceed 300% of its large exposures capital base, it should obtain the FSA's written approval.

...

...

### 3.2 Reporting

8 A bank must submit the large exposures reporting form LE2 or LE3, as appropriate, on a solo (or solo-consolidated) and consolidated basis, at least quarterly (see ~~Supervision Manual, chapter 3~~ SUP 16.7.8R). The basis of reporting should be agreed with the FSA.

...

### 7.1 **General**

2 For the purposes of form LE2 (and LE3), where a bank deals in securities, the exposure to the issuer of the security should be calculated as follows ~~(see~~ Supervision Manual, chapter 16):

(a) ...

...

7.4 Repos and reverse repos: stock lending and borrowing

9. For repos in the banking book, the security sold to a counterparty should be included as a long position in form LE2 (and LE3), unless the security sold was itself received as ineligible collateral and did not give rise to issuer risk ~~(see Supervision Manual, chapter 16)~~.

...

7.6 'Soft' limits on issuer risk

...

26 Where the FSA has been pre-notified of and agreed soft limits with a bank, exposures within these agreed limits need not be further pre-notified. However, they are subject to the incremental capital policy and should be post-notified.

- a) Inclusion on the form LE2 or LE3 is sufficient for post-reporting of exposures. The form BSD3 is used for reporting the incremental capital charges.

...

8.1 Large exposures policy statements

...

3 ...

(g) the bank's approach to top slicing;

- a) The FSA still does not condone the practice of top slicing. Top slicing is the practice by which a bank systematically collateralises only the element of its exposure that exceeds the 25% limit to bring it within the limit or collateralises ~~only~~ just more than the element of an exposure that equals or exceeds 10% of the bank's large exposures capital base in order to bring the sum below the clustering limit. The FSA takes such activity into account when assessing a bank's individual capital ratio(s) accordingly.

...

## 10.1 General

1 A bank should limit the total of its exposures, other than its exempt exposures, to individual counterparties or groups of closely related counterparties equalling or exceeding 10% of its LECB to a maximum of 800% of its LECB. This applies whether the exposures arise in the banking or the trading book.

2 A bank must report all exposures equalling or exceeding 10% of capital on a quarterly basis. The LECB should be adopted for determining which exposures need to be reported. The more an exposure exceeds 10%, the more rigorous the FSA is in requiring a bank's management to justify that exposure. A bank should adopt policies which will not lead to 10% being exceeded as a matter of course.

a) ...

...

c) The quarterly LE2 return (or LE3 as appropriate) must be used for reporting large exposures ~~over~~ of 10% or more of capital (see ~~the rule in the Supervision Manual relating to the LE2 reporting form~~ SUP 16.7.8R).

...

### 13.2.5 *Arrangements to comply with the large exposures policy*

9 A bank should receive sufficient information from a fund manager to ensure that it is in daily compliance with the large exposure policy. In particular, it should focus on:

...

(e) the requirement to post-notify large exposures ~~over~~ equal to or greater than 10% of capital to include both end-period and maximum within the reporting period.

**PERIODIC FEES (2003/2004) (NO 2) INSTRUMENT 2003****Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 156 (General supplementary powers);
  - (2) section 157(1) (Guidance); and
  - (3) paragraph 17(1) of Schedule 1 (Fees).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 June 2003.

**Amendments to the Handbook**

- D. The modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2):

(1)	(2)
SUP	Annex A
PROF	Annex B
CIS	Annex C
REC	Annex D
COMP	Annex E
DISP	Annex F
AUTH	Annex G

**Citation**

- E. This instrument may be cited as the Periodic Fees (2003/2004) (No 2) Instrument 2003.

By order of the Board  
15 May 2003

## Annex A

### Amendments to the Supervision manual

In this annex, underlining indicates new text and striking through indicates deleted text.

#### SUP 20: Fees ~~R~~rules

##### Annex 1R

Periodic fees payable in relation to the period from 1 April 2003 to 31 March 2004.

...

#### 4 Table Part 2 – Fee tariffs

(This part will be made at a later date.)

- (1) For each activity group specified in the table below, the fee is the total of the sums payable for each of the tariff bands applicable to the *firm's* business, calculated as follows:
  - (a) the relevant minimum fee; plus
  - (b) an additional fee calculated by multiplying the *firm's* tariff base by the appropriate rates applying to each tranche of the tariff base, as indicated.
- (2) A *firm* may apply the relevant tariff bases and rates to non-UK business, as well as to its UK business, if:
  - (a) it has reasonable grounds for believing that the costs of identifying the *firm's* UK business separately from its non-UK business in the way described in Part 7 are disproportionate to the difference in fees payable; and
  - (b) it notifies the FSA in writing at the same time as it provides the information concerned under SUP 20.3 (Information on which fees are calculated), or, if earlier, at the time it pays the fees concerned.
- (3) For a *firm* which has not complied with SUP 20.3.2R (Information on which fees are calculated) for this period:
  - (a) the fee is calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by a factor of 1.10;
  - (b) an additional administrative fee of £250 is payable; and
  - (c) the minimum total fee (including the administrative fee in (b)) is £350.



<u>Activity group (defined in Part 7)</u>	<u>Valuation date for tariff bases (defined in Part 7)</u>	<u>Fee payable (tariff bases defined in Part 7)</u>	
<u>A.1 Deposit acceptors</u>	<p><u>For banks and e-money issuers:</u></p> <p><u>modified eligible liabilities (MELs), valued at:</u></p> <ul style="list-style-type: none"> <li><u>for a firm which reports monthly, the average of the modified eligible liabilities for October, November and December 2002</u></li> <li><u>for a firm which reports quarterly, the modified eligible liabilities for December 2002.</u></li> </ul>	<p><b>Minimum fee (£m of MELs)</b></p> <p>if 0 - 0.5                      £150  if &gt;0.5 - 2                      £500  if &gt;2                                £1,000</p>	<p><b>Fee</b></p> <p>£150  £500  £1,000</p>
		<p><b>£ million of MELs</b></p> <p>0 - 10                                0  &gt;10 - 200                            38.26  &gt;200 - 2,000                        38.08  &gt;2,000 - 10,000                    37.89  &gt;10,000 - 20,000                  37.71  &gt;20,000                                37.34</p>	<p><b>Fee (£/£m or part £m of MELs)</b></p> <p>0  38.26  38.08  37.89  37.71  37.34</p>
	<p><u>For credit unions:</u></p> <p><u>MELs, valued at December 2002 or as disclosed by the most recent annual return made prior to that date.</u></p>		
	<p><u>For building societies:</u></p> <p><u>MELs, valued at the average of the modified eligible liabilities for October, November and December 2002.</u></p>	<p>The lower of:</p> <p>a) <u>the fee calculated for banks above; and</u></p> <p>b) <u>170% of the General Charge paid by the building society (or in the case of a merger of two or more societies which occurs between 1 December 2001 and 31 March 2004, paid by each of them) to the Building Societies Commission in 2001/2 under Statutory Instrument 2001 No. 815.</u></p>	
	<p><u>For a firm in A.1 which has a limitation on its permission to the effect that it may accept deposits from wholesale depositors only, the fee is calculated as above less 30%.</u></p>		
<u>A.2</u>	<p><u>This fee-block does not apply for this period</u></p>		
<u>A.3 Firms conducting insurance activities subject only to prudential regulation</u>	<p><u>Annual gross premium income (GPI), valued at the period to which the most recent annual return relates [Note: for most firms this will be the 12 months ended 31 December 2002].</u></p>	<p><b>Minimum fee £ million of GPI</b></p> <p>0 - 0.5                                £200  &gt;0.5 - 2                                1,849.8  &gt;2 - 5                                    1,710.6  &gt;5 - 20                                  1,571.4  &gt;20 - 75                                497.3  &gt;75 - 150                                427.7  &gt;150                                        59.7</p>	<p><b>Fee</b></p> <p>£200  <b>Fee (£/£m or part £m of GPI)</b></p> <p>0  1,849.8  1,710.6  1,571.4  497.3  427.7  59.7</p>
		<b>AND</b>	

<u>Activity group (defined in Part 7)</u>	<u>Valuation date for tariff bases (defined in Part 7)</u>	<u>Fee payable (tariff bases defined in Part 7)</u>	
	<u>Gross technical liabilities (GTL) valued at the end of the period to which the most recent annual return relates [Note: for most firms this will be the 12 months ended 31 December 2002].</u>	<u>Minimum fee</u> <u>£ million of</u> <u>GTL</u> <u>0 - 1</u> <u>&gt;1 - 5</u> <u>&gt;5 - 50</u> <u>&gt;50 - 100</u> <u>&gt;100 - 1,000</u> <u>&gt;1,000</u>	<u>Fee</u> <u>£200</u> <u>Fee (£/£m or</u> <u>part £m of GTL)</u> <u>0</u> <u>42.75</u> <u>39.54</u> <u>36.32</u> <u>11.49</u> <u>4.60</u>
<u>A.4 Firms conducting insurance activities subject to both prudential and conduct of business regulation</u>	<u>Adjusted annual gross premium income (AGPI) valued at the financial year ended in the calendar year ending 31 December 2002.</u>	<u>Minimum fee</u> <u>£ million of</u> <u>AGPI</u> <u>0 - 1</u> <u>&gt;1 - 50</u> <u>&gt;50 - 1,000</u> <u>&gt;1,000 - 2,000</u> <u>&gt;2,000</u>	<u>Fee</u> <u>200</u> <u>Fee (£/£m or</u> <u>part £m of AGPI)</u> <u>0</u> <u>578.83</u> <u>522.55</u> <u>345.69</u> <u>233.14</u>
	<b>AND</b>		
	<u>Mathematical reserves (MR) valued at the end of financial year ended in the calendar year ending 31 December 2002.</u>	<u>Minimum fee</u> <u>£ million of</u> <u>MR</u> <u>0 - 1</u> <u>&gt;1 - 10</u> <u>&gt;10 - 100</u> <u>&gt;100 - 1,000</u> <u>&gt;1,000 - 5,000</u> <u>&gt;5,000 - 15,000</u> <u>&gt; 15,000</u>	<u>Fee</u> <u>200</u> <u>Fee (£/£m or</u> <u>part £m of MR)</u> <u>0</u> <u>36.18</u> <u>32.66</u> <u>21.61</u> <u>14.57</u> <u>11.11</u> <u>8.54</u>
<u>A.5 Managing agents at Lloyd's</u>	<u>Active capacity (AC), in respect of the 2003 Underwriting Year (as reported to the Society of Lloyd's)</u>	<u>Minimum fee</u> <u>£ million of</u> <u>AC</u> <u>0 - 50</u> <u>&gt;50 - 150</u> <u>&gt;150 - 250</u> <u>&gt;250</u>	<u>Fee</u> <u>£1,000</u> <u>Fee (£/£m or part</u> <u>£m of AC)</u> <u>0</u> <u>105</u> <u>89</u> <u>25</u>
<u>A.6 The Society of Lloyd's</u>	<u>Not applicable</u>		<u>£1,109,000</u>

<u>Activity group (defined in Part 7)</u>	<u>Valuation date for tariff bases (defined in Part 7)</u>	<u>Fee payable (tariff bases defined in Part 7)</u>	
<u>A.7 Fund managers</u>	For <b>class (1)C, (2), and (3) firms</b> : <u>Funds under management (FuM), valued at 31 December 2002.</u>	<u>Minimum fee</u>	<u>Fee</u> £1,200
		<u>£ million of FuM</u>	<u>Fee (£/£m or part £m of FuM)</u>
		>0 - 10	0
		>10 - 100	69.95
		>100 - 2,500	22.21
		>2,500 - 10,000	12.11
		>10,000	1.34
	For <b>class (1)B firms</b> :	The fee calculated as for <b>class (1)C firms</b> above less 15%.	
	For <b>class (1)A firms</b> :	The fee calculated as for <b>class (1)C firms</b> above less 50%.	
<u>A.8</u>	This fee-block does not apply for this period.		
<u>A.9 Operators, trustees and depositaries of collective investment schemes</u>	Annual gross income (GI), valued at the most recent financial year ended before 31 December 2002.	<u>Minimum fee</u>	<u>Fee</u> £2,000
		<u>£ million of GI</u>	<u>Fee (£/£m or part £m of GI)</u>
		>0 - 1	0
		>1 - 20	1,859.18
		>20 - 500	1,506.29
		>500 - 1,000	1,287.64
	>1,000	969.37	
<u>A.10 Firms dealing as principal in investments</u>	Number of traders as at 31 December 2002.	<u>Minimum fee</u>	<u>Fee</u> £2,100
		<u>No. of traders</u>	<u>Fee (£/trader)</u>
		0 - 2	0
		3 - 5	1,978
		6 - 10	1,405
		11 - 50	1,277
		51 - 200	1,081
	>200	864	
<u>A.11</u>	This fee-block does not apply for this period.		
<u>A.12 Advisory arrangers, dealers, or brokers (holding or controlling client money or assets, or both)</u>	Relevant <i>approved persons</i> as at 31 December 2002.	<u>Minimum fee</u>	<u>Fee</u> £1,600
		<u>No. of persons</u>	<u>Fee (£/person)</u>
		>0 - 1	0
		2 - 4	909
		5 - 10	452
		11 - 25	314
		26 - 150	169
		151 - 1,500	126
	>1,500	84	
	For a <i>professional firm</i> in A.12 the fee is calculated as above less 20%.		

<u>Activity group (defined in Part 7)</u>	<u>Valuation date for tariff bases (defined in Part 7)</u>	<u>Fee payable (tariff bases defined in Part 7)</u>	
<b><u>A.13 Advisory arrangers, dealers, or brokers (not holding or controlling client money or assets, or both)</u></b>	For <b>class (2) firms</b> : Relevant <i>approved persons</i> as at 31 December 2002.	Minimum fee	<b>Fee</b> £1,525
		<b>No. of persons</b>	<b>Fee (£/person)</b>
		>0 - 1	0
		2 - 4	813
		5 - 10	779
		11 - 25	743
		26 - 150	677
		151 - 2,500	609
	>2,500	566	
	For <b>class (1) firms</b> :		£1,525
For a <i>professional firm</i> in A.13 the fee is calculated as above less 20%.			
<b><u>A.14 Corporate finance advisers</u></b>	Relevant <i>approved persons</i> as at 31 December 2002.	Minimum fee	<b>Fee</b> £1,100
		<b>No. of persons</b>	<b>Fee (£/person)</b>
		>0 - 1	0
		2	1,057
		3 - 4	952
		5 - 10	856
		11 - 100	771
		101 - 200	540
	>200	323	
<b><u>A.15</u></b>	This fee-block does not apply for this period.		
<b><u>A.16 Pensions review levy firms</u></b>	Not applicable.	197.9% of the pensions review levy amount paid to <i>PIA</i> in 2001/2.	
<b><u>A.17</u></b>	This fee-block does not apply for this period.		
<b><u>B</u></b>			
<b><u>Firms that have been prescribed as an operator of a prescribed market under the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001, SI 2001/996.</u></b>	Not applicable		£20,000
<b><u>C</u></b> <b><u>Service companies</u></b>	Not applicable	Baltic Exchange Ltd	£20,000
		Bloomberg LP	£30,000
		Clearstream Banking	£20,000
		EMX Co Ltd	£20,000
		LIFFE Services Ltd	£20,000

<u>Activity group (defined in Part 7)</u>	<u>Valuation date for tariff bases (defined in Part 7)</u>	<u>Fee payable (tariff bases defined in Part 7)</u>
		Ofex plc
		£30,000
		OMGEO Ltd
		£20,000
		OMIRIS Networks Ltd
		£20,000
		Reuters Ltd
		£30,000
		Reuters Intertrade
		£20,000
		Direct Ltd
		Swapswire Ltd
		£20,000
		Thomson Financial Ltd
		£20,000
		Treasurydealer Ltd
		£20,000

## 5 Table Part 3 – Permitted deductions

(This part will be made at a later date.)

(1) The following deductions apply:

<u>Activity group (defined in Part 7)</u>	<u>Nature of deduction</u>	<u>Amount of deduction</u>
<u>A.1</u>	<u>Financial penalties received</u>	<u>1.5% of the fee payable by the firm for the activity group (see Part 2)</u>
<u>A.4</u>	<u>Financial penalties received</u>	<u>3.1% of the fee payable by the firm for the activity group (see Part 2)</u>
<u>A.7</u>	<u>Financial penalties received</u>	<u>1.7% of the fee payable by the firm for the activity group (see Part 2)</u>
<u>A.12</u>	<u>Financial penalties received</u>	<u>29.0% of the fee payable by the firm for the activity group (see Part 2)</u>
<u>A.13</u>	<u>Financial penalties received</u>	<u>3.1% of the fee payable by the firm for the activity group (see Part 2)</u>
<u>A.16</u>	<u>Financial penalties received</u>	<u>11.6% of the fee payable by the firm for the activity group (see Part 2)</u>

## 6 Table Part 4 – Fee tariffs applicable to firms with new or extended permissions

(This part will be made at a later date.)

- (1) The provisions of Part 2 apply, except that the amount payable for each additional activity grouping is the greater of:
- the minimum fee specified for the activity grouping; and
  - the fee calculated in accordance with Part 2 for that activity grouping, using the relevant information supplied by the firm to the FSA in the course of its application, for the projected valuation of the first year of the business to which the tariff applies.

## 7 Table Part 5 – Modification of fee tariffs for incoming EEA firms and incoming Treaty firms

(This part will be made at a later date.)

<u>Activity group (see Part 2 for descriptions)</u>	<u>Percentage of tariff payable under Part 2 applicable to the firm subject to a minimum amount payable of £100 (unless specified below)</u>
<u>A.1</u>	<u>20% (for a firm operating on cross-border services basis only, 0% and the minimum sum is not applicable)</u>
<u>A.3</u>	<u>0% and the minimum sum is not applicable</u>
<u>A.4</u>	<u>75%</u>
<u>A.7, A.8 and A.9</u>	<u>95%</u>
<u>A.10, A.11, A.12 and A.13</u>	<u>90%</u>

**8 Table Part 6 – Transaction reporting fees**

(This part will be made at a later date.)

<u>Fee per transaction</u>	<u>Date payable</u>	<u>Method of payment</u>
<u>£0.02 (including VAT)</u>	<u>First working day of each month</u>	<u>As specified in Part 1</u>

**9 Table Part 7 – Activity groups and tariff bases**

<u>Activity group</u>	<u>Fee-payer falls in the activity group if</u>	<u>Tariff-base</u>
<b>A.1 Deposit acceptors</b>	<p>its <i>permission</i> includes <i>accepting deposits or issuing e-money</i>;</p> <p><b>BUT DOES NOT</b> include <del>any</del> either of the following:</p> <ul style="list-style-type: none"> <li>• <i>effecting contracts of insurance</i>;</li> <li>• <i>carrying out contracts of insurance</i>.</li> </ul>	<p>(This part will be made at a later date.)</p> <p><b><u>MODIFIED ELIGIBLE LIABILITIES</u></b></p> <p><b><u>For banks and e-money issuers:</u></b></p> <p><b><u>Part 1:</u></b></p> <p><b><u>Liabilities</u></b></p> <p><b><u>In sterling:</u></b></p> <p><u>£2 + £3 + £4 + £5A + £5B + £6B + £6C + £6D + £6E + £6F + £6G + £6H + £6J + £7B + £7C + £7D + £7E + £7F + £7G + £7H + £7J + £8 + £10 + 60% of £11A + £44</u></p> <p><u>plus</u></p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p><b>A.1 Deposit acceptors</b></p> <p><b>Continued...</b></p>		<p><u>In foreign currency, one-third of:</u>  <u>E2 + E3 + E4 + E5A + E5B + E6B + E6C + E6D + E6E + E6F + E6G + E6H + E6J + E7B + E7C + E7D + E7E + E7F + E7G + E7H + E7J + E8 + E10</u>  <u>+ 60% of E11A + E44</u>  <u>+ C2 + C3 + C4 + C5A + C5B + C6B + C6C + C6D + C6E + C6F + C6G + C6H + C6J + C7B + C7C + C7D + C7E + C7F + C7G + C7H + C7J + C8 + C10</u>  <u>+ 60% of C11A: less</u></p> <p><b>Assets</b></p> <p><u>In sterling:</u>  <u>£21B + 60% of £22A + £23D + £23E + £23F + £30A + £30B + £31A + £31B + £32AA</u></p> <p><b>plus</b></p> <p><u>In foreign currency, one-third of:</u>  <u>E21B + 60% of E22A + E23D + E23E + E23F + E30A + E30B + E31A + E31B + E32AA + C21B + 60% of C22A + C23D + C23E + C23F + C30A + C30B + C31A + C31B + C32AA</u></p>
		<p><b>Part 2: Non-resident office offset</b></p> <p><u>The fee base is adjusted by deducting from the amount calculated in accordance with part 1 above, the Non-Resident Office Offset amount obtained by subtracting item 45D from item 45BA in the Form BT. The Non-Resident Office Offset amount, if it would otherwise have been a negative number, is zero.</u></p>
		<p><u>Notes:</u></p> <p>1) <u>All references in the above formula are to entries on Form BT (that is, the Balance Sheet Form completed to provide information required following the Banking Statistics Review 1997 and returned by banks to the Bank of England as required by the Bank of England Act 1998).</u></p> <p>2) <u>‘E’ refers to assets and liabilities denominated in euro (as referred to in column 2 of Form BT) and ‘C’ refers to assets and liabilities denominated in currencies other than sterling and euro (as referred to in column 3 of Form BT). In accordance with Form BT, assets and liabilities in currencies other than sterling are to be recorded in sterling.</u></p> <p>3) <u>The figures reported on the Form BT relate to business conducted out of offices in the United Kingdom.</u></p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
		<p><b><u>For credit unions:</u></b></p> <p><u>Deposits with the credit union (share capital)</u>  <b>LESS</b>  <u>the credit union's bank deposits (investments + cash at bank)</u></p> <p><u>Note:</u>  <u>Only United Kingdom business is relevant for calculating credit unions' MELs.</u></p>



Activity group	Fee-payer falls in the activity group if	Tariff-base
		<p><b><u>For building societies:</u></b></p> <ul style="list-style-type: none"> <li>• <u>deposit liabilities (including debt securities up to five years original maturity)</u> (that is, the amounts in sterling (in column 1) and one-third of foreign currency referenced amounts (in columns 2 and 3) for items <u>B1.1+B1.2+B2.0a+B2.0b+B2.10 +B2.13+B2.14+B2.15+B2.16)</u>)</li> </ul> <p><b><u>LESS amounts in respect of:</u></b></p> <ul style="list-style-type: none"> <li>• <b><u>sterling repo liabilities with the Bank of England</u></b> (that is, <u>ONLY</u> the amounts in sterling (in column 5) for item <u>B2.5a)</u>)</li> <li>• <b><u>balances held with the Bank of England</u></b> (excluding cash ratio deposits) (that is, the amounts in sterling (in column 1) and one-third of foreign currency referenced amounts (in columns 2 and 3) for item <u>B6.2a</u>, less the amounts in sterling (in column 1) and one-third of foreign currency referenced amounts (in columns 2 and 3) for item <u>OW1.1)</u>)</li> <li>• <b><u>market loans to banks, building societies</u></b> (balances with and loans to, plus CDs, Commercial paper) (that is, the amounts in sterling (in column 1) and one-third of foreign currency referenced amounts (in columns 2 and 3) for items <u>B6.3.a+B6.4.a+B6.4b+B6.5a +B6.5b+B6.12a)</u>)</li> <li>• <b><u>investments with banks and building societies</u></b> (bonds, notes and other debt instruments up to five years original maturity) (that is, the amounts in sterling (in column 1) and one-third of foreign currency referenced amounts (in columns 2 and 3) for items <u>B6.6a1+B6.6a2+B6.10a1 +B6.10a2)</u>)</li> </ul> <p><b><u>Notes:</u></b> All references in the definition for building society MELs are to entries in the <u>MFS1</u> which is submitted <i>monthly</i> by all <i>building societies</i> to the <u>FSA</u>.</p>
A.2	This activity group does not apply for this period.	

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p><b>A.3 Firms conducting insurance activities subject only to prudential regulation</b></p>	<p>its <i>permission</i> includes one or more of the following:</p> <ul style="list-style-type: none"> <li>• <i>effecting contracts of insurance;</i></li> <li>• <i>carrying out contracts of insurance;</i></li> </ul> <p><b>BUT ONLY</b> in respect of <i>specified investments</i> that are:</p> <ul style="list-style-type: none"> <li>- <i>general insurance contracts;</i> or</li> <li>- <i>long-term insurance contracts</i> other than <i>life-policies</i>.</li> </ul>	<p>(This part will be made at a later date.)</p> <p><b><u>GROSS PREMIUM INCOME AND GROSS TECHNICAL LIABILITIES</u></b></p> <p><b><u>For insurers:</u></b>  <u>The amount of <i>premiums</i> receivable which must be included in the documents required to be deposited under <i>IPRU (INS) 9.6</i> in relation to the financial year to which the documents relate but disregarding for this purpose such amounts as are not included in the document by reason of a <i>waiver</i> or an order under section 68 of the Insurance Companies Act 1982 carried forward as an amendment to <i>IPRU(INS)</i> under transitional provisions relating to written concessions in <i>SUP</i>;</u>  <u>less,</u>  <u><i>premiums</i> relating to <i>pension fund management</i> business where the <i>firm</i> owns the <i>investments</i> and there is no transfer of risk;</u></p> <p><b>AND</b></p> <p><u>the amount of gross technical liabilities (<i>IPRU (INS) Appendix 9.1 – Form 15, line 19</i>) which must be included in the documents required to be deposited under <i>IPRU (INS) 9.6R</i> in relation to the financial year to which the documents relate but disregarding for this purpose such amounts as are not included in the document by reason of a <i>waiver</i> or an order under section 68 of the Insurance Companies Act 1982 carried forward as an amendment to <i>IPRU(INS)</i> under transitional provisions relating to written concessions in <i>SUP</i>;</u>  <u>less,</u>  <u>the amount of gross technical liabilities relating to <i>pension fund management</i> business where the <i>firm</i> owns the <i>investments</i> and there is no transfer of risk.</u></p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p><b>A.3 Firms conducting insurance activities subject only to prudential regulation</b></p> <p>Continued...</p>		<p><u>Notes:</u></p> <p>(1) In the case of either:</p> <p>(a) <u>a pure reinsurer carrying on general insurance business through a branch in the United Kingdom; or</u></p> <p>(b) <u>an insurer whose head office is not in an EEA State carrying on general insurance business through a branch in the United Kingdom; or</u></p> <p>(c) <u>a non-EEA insurer other than a Swiss general insurer which has permission to carry on direct insurance business and which has made a deposit in an EEA state other than the United Kingdom in accordance with IPRU(INS) 8.1(2), the amount only includes premiums received and gross technical liabilities held in respect of its United Kingdom business; and</u></p> <p>(2) <u>for a Swiss general insurance company, premiums and gross technical liabilities include those relevant to the operations of the company's United Kingdom branch.</u></p>
		<p><b><u>For friendly societies:</u></b></p> <p><u>Either:</u></p> <p>(a) <u>the value of "contributions" as income under Schedule 7: Part I item 1(a) to the Friendly Societies (Accounts and Related Provisions) Regulations 1994 (Statutory Instrument No. 1983 of 1994) (the regulations) for a non-directive friendly society, included within the income and expenditure account, or</u></p> <p>(b) <u>the value of "gross premiums written" under Schedule 1: Part I items I.1(a) and II.1.(a) of the regulations for a directive friendly society included within the income and expenditure account.</u></p> <p><u>Note:</u></p> <p><u>In both (a) and (b) above only premiums receivable in respect of United Kingdom business are relevant.</u></p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p><b>A.4 Firms conducting insurance activities subject to both prudential and conduct of business regulation</b></p>	<p>its <i>permission</i> includes one or more of:</p> <ul style="list-style-type: none"> <li>• <i>effecting contracts of insurance;</i></li> <li>• <i>carrying out contracts of insurance;</i></li> </ul> <p><b>both in</b> respect of <i>specified investments</i> including <i>life policies;</i></p> <ul style="list-style-type: none"> <li>• <i>entering as provider into a funeral plan contract.</i></li> </ul>	<p>(This part will be made at a later date.)</p> <p><b><u>ADJUSTED GROSS PREMIUM INCOME AND MATHEMATICAL RESERVES</u></b></p> <p><u>Amount of new regular <i>premium</i> business (yearly <i>premiums</i> including reassurances ceded but excluding cancellations and reassurances accepted), times ten;</u>  <u>plus</u>  <u>amounts of new single <i>premium</i> business (total including reassurances ceded but excluding cancellations and reassurances accepted). Group protection business (life and private health insurance) must be included;</u>  <u>less</u>  <u><i>premiums</i> relating to pension fund management business where the <i>firm</i> owns the <i>investments</i> and there is no transfer of risk.</u></p> <p><u>For each of the above, business transacted through independent practitioners will be divided by two in calculating the adjusted gross premium income;</u></p>
		<p><b>AND</b></p>
		<p><u>the amount of mathematical reserves (<i>IPRU (INS)</i> Appendix 9.1R – Form 9, Line 23) which must be included in the documents required to be deposited under-<i>IPRU (INS)</i> 9.6R in relation to the financial year to which the documents relate but disregarding for this purpose such amounts as are not included in the document by reason of a <i>waiver</i> or an order under section 68 of the Insurance Companies Act 1982 carried forward as an amendment to <i>IPRU(INS)</i> under transitional provisions relating to written concessions in <i>SUP</i>;</u>  <b><u>Less,</u></b>  <u>mathematical reserves relating to <i>pension fund management</i> business where the <i>firm</i> owns the <i>investments</i> and there is no transfer of risk.</u></p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p><b>A.4 Firms conducting insurance activities subject to both prudential and conduct of business regulation</b></p> <p>Continued...</p>		<p>Notes:</p> <p>1) <u>Business conducted through a <i>marketing associate</i> should be excluded in reporting the <i>product provider's premium income</i>.</u></p> <p>2) <u>Only <i>premiums</i> receivable and <i>mathematical reserves</i> held in respect of <i>United Kingdom</i> business are relevant.</u></p>
<p><b>A.5 Managing agents at Lloyd's</b></p>	<p>its <i>permission</i> includes <i>managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's</i>.</p>	<p><del>(This part will be made at a later date.)</del></p> <p><b><u>ACTIVE CAPACITY</u></b></p> <p><u>The capacity of the <i>syndicate(s)</i> under management in the year in question. This includes the capacity for <i>syndicate(s)</i> that are not writing new business, but have not been closed off in the year in question.</u></p>
<p><b>A.6 The Society of Lloyd's</b></p>	<p>it is the <i>Society of Lloyd's</i>.</p>	<p><del>(This part will be made at a later date.)</del></p> <p><u>Not applicable</u></p>

GENERALLY, FOR FEE-BLOCKS A.7 TO ~~A.15~~A.14 BELOW, ONLY THOSE REGULATED ACTIVITIES THAT ARE NOT LIMITED TO NON-MAINSTREAM REGULATED ACTIVITIES SHOULD BE TAKEN INTO ACCOUNT IN DETERMINING WHICH FEE-BLOCK(S) FEE-PAYERS BELONG TO.

HOWEVER, IN THE CASE THAT ALL THE REGULATED ACTIVITIES WITHIN A FIRM'S PERMISSION ARE LIMITED TO NON-MAINSTREAM REGULATED ACTIVITIES, THEN THAT FIRM SHALL BE ALLOCATED TO FEE-BLOCK A.13 ALONE.

Activity group	Fee-payer falls in the activity group if	Tariff-base
A.7 Fund Managers	<p><b>(1)</b> <i>its permission includes managing investments</i>;</p> <p><b>OR</b></p> <p><b>(2)</b> <i>its permission includes ONLY either one or both of:</i></p> <ul style="list-style-type: none"> <li>• <i>safeguarding and administering of investments (without arranging); and</i></li> <li>• <i>arranging safeguarding and administration of assets;</i></li> </ul> <p><b>OR</b></p> <p><b>(3)</b> <i>the firm is a venture capital firm.</i></p> <p><b>Class (1) firms</b> This activity group is subdivided into three classes:</p> <ul style="list-style-type: none"> <li>- <b>class (1)A</b>, where the funds managed by the <i>firm</i> belong to one or more <i>occupational pension schemes</i>;</li> <li>- <b>class (1)B</b>, where: <ul style="list-style-type: none"> <li>(a) the <i>firm</i> is not a class (1)A <i>firm</i>; and</li> <li>(b) the <i>firm's</i> permission includes <b>NEITHER</b> of the following: <ul style="list-style-type: none"> <li>• <i>safeguarding and administering of investments (without arranging);</i></li> <li>• <i>arranging safeguarding and administration of assets; and</i></li> </ul> </li> <li>(c) the <i>firm</i> <b>EITHER</b>: <ul style="list-style-type: none"> <li>• has a <i>requirement</i> that prohibits the <i>firm</i> from holding <del>and</del> or controlling <i>client money</i>, or both; <b>OR</b></li> <li>• if it does not have such a <i>requirement</i>, <b>only</b> holds<del> or controls</del> <i>client money</i> (or both), arising from an agreement under which <i>commission</i> is rebated to a <i>client</i>; and</li> </ul> </li> </ul> </li> <li>- <b>class (1)C</b>, where the <i>firm</i> is not within class (1)A or class (1)B.</li> </ul>	<p>(This part will be made at a later date.)</p> <p><b><u>FUNDS UNDER MANAGEMENT (FuM)</u></b></p> <p>The total value, in pounds sterling, of all assets (see note (a) below) in portfolios which the <i>firm</i> manages, on a discretionary basis (see note (b) below), in accordance with its terms of business, less:</p> <ul style="list-style-type: none"> <li>(a) funds covered by the exclusion contained in article 38 (Attorneys) of the <i>Regulated Activities Order</i>;</li> <li>(b) funds covered by the exclusion contained in article 66(3) (Trustees, nominees and personal representatives ) of the <i>Regulated Activities Order</i>;</li> <li>(c) funds covered by the exclusion contained in article 68(6) (Sale of goods or supply of services) of the <i>Regulated Activities Order</i>;</li> <li>(d) funds covered by the exclusion contained in article 69(5) (Groups and joint enterprises) of the <i>Regulated Activities Order</i>; and</li> <li>(e) the value of those parts of the managed portfolios in respect of which the responsibility for the discretionary management has been formally delegated to another <i>firm</i> (and which <i>firm</i> will include the value of the assets in question in its own FuM total); any such deduction should identify the <i>firm</i> to which management responsibility has been delegated.</li> </ul>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p><b>A.7 Fund Managers</b></p> <p>Continued...</p>		<p>Notes on FuM</p> <p>a) <u>For the purposes of calculating the value of funds under management, “assets” means all assets that consist of or include any investment which is a designated investment, or those assets in respect of which the arrangements for their management are such that the assets may consist of or include such investments, and either the assets have at any time since 29 April 1988 done so or the arrangements have at any time (whether before or after that date) been held out as arrangements under which the assets would do so.</u></p> <p>b) <u>Assets managed on a non-discretionary basis, being assets that the firm has a contractual duty to keep under continuous review but in respect of which prior specific consent of the client must be obtained for proposed transactions, are NOT included as this activity is covered in those charged to fees in activity groups A.12 and A.13.</u></p> <p>c) <u>In respect of collective investment schemes, “assets” means the total value of the assets of the scheme.</u></p> <p>d) <u>For an OPS firm, the FuM should also be reduced by the value of the assets held as a result of a decision taken in accordance with article 4(6) of The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (investments in collective investment schemes or bodies corporate which have as their primary purpose the acquisition, directly, or indirectly, of “relevant investments”, as defined in that article).</u></p> <p>e) <u>Only assets that are managed from an establishment maintained by the firm in the United Kingdom are relevant.</u></p>
<p><b>A.8</b></p>	<p>This activity group does not apply for this period.</p>	

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p><b>A.9 Operators, Trustees and Depositaries of collective investment schemes</b></p>	<p><del>(1.)</del> its <i>permission</i>;</p> <p>(a) includes one or more of the following:</p> <ul style="list-style-type: none"> <li>• <i>establishing, operating or winding up a regulated collective investment scheme;</i></li> <li>• <i>establishing, operating or winding up an unregulated collective investment scheme;</i></li> <li>• <i>acting as trustee of an authorised unit trust scheme;</i></li> <li>• <i>acting as the depositary or sole director of an open-ended investment company;</i></li> </ul> <p><b>AND</b></p> <p>(b) <b>PROVIDED</b> the <i>firm</i> is <b>NOT</b> one of the following:</p> <ul style="list-style-type: none"> <li>• a <i>corporate finance advisory firm</i>;</li> <li>• a <i>firm</i> in which the above activities are limited to carrying out <i>corporate finance business</i>;</li> <li>• a <i>venture capital firm</i>;</li> </ul> <p><b>OR</b></p> <p><del>(2.)</del> if the fee-payer has none of the <i>regulated activities</i> above within its <i>permission</i>, but ALL the remaining <i>regulated activities</i> in its <i>permission</i> are limited to carrying out trustee activities.</p>	<p>(This part will be made at a later date.)</p> <p><b><u>GROSS INCOME</u></b></p> <p><u>For operators (including ACDs and managers of unit trusts):</u></p> <p><u>gross income from the activity relating to fee-block A.9 is defined as:</u></p> <ul style="list-style-type: none"> <li>• <u>the amount of the annual charge on funds invested in <i>regulated</i> or <i>unregulated collective investment schemes</i> received or receivable in the latest accounting period (this is calculated as a % of funds invested, typically 1% p.a.);</u></li> </ul> <p><b><u>PLUS</u></b></p> <ul style="list-style-type: none"> <li>• <u>the front-end or exit charge levied on sales or redemptions of <i>collective investment schemes</i> (typically 4-5% of sales/redemptions) in that same accounting period;</u></li> </ul> <p><b><u>PLUS</u></b></p> <ul style="list-style-type: none"> <li>• <u>any additional initial or management charges levied through a product wrapper such as a <i>PEP</i> or an <i>ISA</i>;</u></li> </ul> <p><b><u>BUT EXCLUDING</u></b> box management profits.</p> <p><b><u>For depositaries (including trustees of collective investment schemes and ICVC depositaries):</u></b></p> <p><u>The amount of the annual charge levied on funds in <i>regulated collective investment schemes</i> for which they act as <i>depositary</i> (typically a % of the total funds for which they act as <i>depositary</i>).</u></p> <p><u>Note:</u> <u>Only the gross income corresponding to <i>United Kingdom</i> business is relevant.</u></p>



Activity group	Fee-payer falls in the activity group if	Tariff-base
<p><b>A.10 Firms dealing as principal</b></p>	<p>its <i>permission</i> includes <i>dealing in investments as principal</i>;</p> <p><b>BUT NOT</b> if one or more of the following apply:</p> <ul style="list-style-type: none"> <li>• <del>the above activity is carried on exclusively in respect of <i>life policies</i>;</del></li> <li>• the <i>firm</i> is acting exclusively as a matched principal broker;</li> <li>• the above activity is limited either to acting as an <i>operator</i> of a <i>collective investment scheme</i>, or to carrying out <i>trustee</i> activities;</li> <li>• the <i>firm</i> is a <i>corporate finance advisory firm</i>;</li> <li>• the above activity is otherwise limited to carrying out <i>corporate finance business</i>;</li> <li>• the <i>firm</i> is subject to a <i>limitation</i> to the effect that the <i>firm</i>, in carrying on this <i>regulated activity</i>, is limited to entering into transactions in a manner which, if the <i>firm</i> was an <i>unauthorised person</i>, would come within article 16 of the <i>Regulated Activities Order</i> (Dealing in contractually based investments);</li> <li>• <u>the above activity is limited to not acting as a <i>market maker</i>;</u></li> <li>• <u>the <i>firm</i> is an <i>oil market participant</i>, <i>energy market participant</i> or a <i>local</i>;</u></li> <li>• <u>its <i>permission</i> includes either:</u> <ul style="list-style-type: none"> <li>- <u><i>effecting contracts of insurance</i>; or</u></li> <li>- <u><i>carrying out contracts of insurance</i>.</u></li> </ul> </li> </ul>	<p>(This part will be made at alter date.)</p> <p><b><u>NUMBER OF TRADERS</u></b></p> <p><u>Any <i>employee</i> or agent, who:</u></p> <ul style="list-style-type: none"> <li>• <u>ordinarily acts within the <i>United Kingdom</i> on behalf of an <i>authorised person</i> liable to pay fees to the <i>FSA</i> in its <i>fee-block A.10</i> (firms dealing as principal); and who,</u></li> <li>• <u>as part of their duties in relation to those activities of the <i>authorised person</i>, commits the <i>firm</i> in market dealings or in transactions in <i>securities</i> or in other <i>specified investments</i> in the course of <i>regulated activities</i>.</u></li> </ul>
<p><b>A.11 Execution-only arrangers, dealers and brokers</b></p>	<p><u>This activity group does not apply for this period.</u></p>	

Activity group	Fee-payer falls in the activity group if	Tariff-base
	<p><del>its permission;</del></p> <p><del>(a) includes one or more of the following:</del></p> <ul style="list-style-type: none"> <li><del>• dealing in investments as agent;</del></li> <li><del>• arranging (bringing about) deals in investments;</del></li> <li><del>• making arrangements with a view to transactions in investments;</del></li> <li><del>• dealing as principal in investments where the activity is carried on exclusively in respect of life policies or where the firm acts as a matched principal broker;</del></li> </ul> <p><del>(b) BUT NONE of the following:</del></p> <ul style="list-style-type: none"> <li><del>• effecting contracts of insurance;</del></li> <li><del>• carrying out contracts of insurance.</del></li> <li><del>• advising on investments (except pension transfers and pension opt outs);</del></li> <li><del>• advising on pension transfers and pension opt outs; or</del></li> <li><del>• accepting deposits;</del></li> </ul> <p><del>AND</del></p> <p><del>(c) PROVIDED the fee-payer is NOT any of the following:</del></p> <ul style="list-style-type: none"> <li><del>• a corporate finance advisory firm;</del></li> <li><del>• a firm for whom all of the applicable activities above are otherwise limited to carrying out corporate finance business;</del></li> <li><del>• a firm whose activities are limited to carrying out venture capital business;</del></li> </ul> <p><del>a firm whose activities are limited to acting as an operator, depositary or trustee of a of a collective investment scheme, or trustee activities.</del></p>	

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p><b>A.12 Advisory arrangers, dealers or brokers (holding or controlling client money <u>and/or assets, or both</u>)</b></p>	<p>its <i>permission</i>;</p> <p>(a) includes one or more of the following:</p> <ul style="list-style-type: none"> <li>• <i>dealing in investments as agent</i>;</li> <li>• <i>arranging (bringing about) deals in investments</i>;</li> <li>• <i>making arrangements with a view to transactions in investments</i>;</li> <li>• <i>dealing as principal in investments where the activity is carried on as a matched principal broker, <u>oil market participant, energy market participant or local</u></i>;</li> </ul> <p><del>AND</del></p> <p>(b) <del>AT LEAST</del> one of the following:</p> <ul style="list-style-type: none"> <li>• <i>advising on investments (except pension transfers and pension opt-outs)</i>;</li> <li>• <i>advising on pension transfers and pension opt-outs</i>;</li> <li>• <i>advising on syndicate participation at Lloyd's</i>;</li> </ul> <p>(be) <b>BUT NONE</b> of the following:</p> <ul style="list-style-type: none"> <li>• <i>effecting contracts of insurance</i>; or</li> <li>• <i>carrying out contracts of insurance</i>.</li> </ul> <p><b>AND</b></p> <p>(c) <b>CAN HAVE</b> one or more of the following:</p> <ul style="list-style-type: none"> <li>• <i>safeguarding and administering of assets</i>;</li> <li>• <i>arranging safeguarding and administration of assets</i>;</li> <li>• the ability to hold <del>and/or</del> control <i>client money, or both</i>: <ul style="list-style-type: none"> <li>- that is, there is no requirement which prohibits the <i>firm</i> from doing this; <u>and</u></li> <li>- <del>and</del> provided that the <i>client money</i> in question does not only arise from an agreement under which <i>commission</i> is rebated to a <i>client</i>;</li> </ul> </li> </ul>	<p>(This part will be made at a later date.)</p> <p><b><u>APPROVED PERSONS</u></b></p> <p><u>The number of <i>persons</i> approved to undertake one, or more, of the following <i>customer functions</i>:</u></p> <p><b><u>CF21 Investment adviser function</u></b>;</p> <p><b><u>CF22 Investment adviser (trainee) function</u></b>;</p> <p><b><u>CF24 Pension transfer specialist function</u></b>;</p> <p><b><u>CF25 Adviser on syndicate participation at Lloyd's function</u></b>; or</p> <p><b><u>CF26 Customer trading function</u></b>.</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p><b>A.12 Advisory arrangers, dealers or brokers (holding or controlling client money and/or assets, or both)</b></p> <p>Continued...</p>	<p><b>AND</b> (<del>de</del>) <b>PROVIDED</b> the fee-payer is <b>NOT</b> any of the following:</p> <ul style="list-style-type: none"> <li>• a <i>corporate finance advisory firm</i>;</li> <li>• a <i>firm</i> for whom all of the applicable activities above are otherwise limited to carrying out <i>corporate finance business</i>;</li> <li>• a <i>firm</i> whose activities are limited to carrying out <i>venture capital business</i>;</li> <li>• a <i>firm</i> whose activities are limited to acting as an operator of a <i>regulated collective investment scheme</i>;</li> <li>• a <i>firm</i> whose activities are limited to carrying out <i>trustee activities</i>;</li> <li>• a <i>service company</i>.</li> </ul>	
<p><b>A.13 Advisory arrangers, dealers or brokers (not holding or controlling client money and/or assets, or both)</b></p>	<p>(<del>1</del>) it is an <i>authorised professional firm</i> and <b>ALL</b> the <i>regulated activities</i> in its <i>permission</i> are limited to <i>non-mainstream regulated activities</i>;</p> <p><b>OR</b></p> <p><del>2.</del> its <i>permission</i> contains both:</p> <ul style="list-style-type: none"> <li>• <del>making arrangements with a view to transactions in investments; and</del></li> <li>• <del>accepting deposits.</del></li> </ul> <p><b>OR</b></p> <p>(<del>2</del>.) its <i>permission</i>,</p> <p>(a) includes one or more of the following:</p> <ul style="list-style-type: none"> <li>• <i>dealing in investments as agent</i>;</li> <li>• <i>arranging (bringing about) deals in investments</i>;</li> <li>• <i>making arrangements with a view to transactions in investments</i>;</li> <li>• <i>dealing as principal in investments</i> where the activity is carried on as a matched principal broker, <i>oil market participant</i>, <i>energy market participant</i> or <i>local</i>;</li> </ul>	<p>(This part will be made at a later date.)</p> <p><b><u>APPROVED PERSONS</u></b></p> <p><u>The number of persons approved to undertake one, or more, of the following customer functions:</u></p> <p><b><u>CF21 Investment adviser function;</u></b>  <b><u>CF22 Investment adviser (trainee) function;</u></b>  <b><u>CF24 Pension transfer specialist function;</u></b>  <b><u>CF25 Adviser on syndicate participation at Lloyd's function; or</u></b>  <b><u>CF26 Customer trading function.</u></b></p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p><b>A.13 Advisory arrangers, dealers or brokers (not holding or controlling client money <del>and/or</del> assets, <u>or both</u>)</b></p> <p>Continued...</p>	<p><del>AND</del></p> <p><del>(b) AT LEAST</del> one of the following:</p> <ul style="list-style-type: none"> <li>• <i>advising on investments (except pension transfers and pension opt-outs);</i></li> <li>• <i>advising on pension transfers and pension opt-outs;</i></li> <li>• <i>advising on syndicate participation at Lloyd's;</i></li> </ul> <p>(be) <b>BUT NONE</b> of the following:</p> <ul style="list-style-type: none"> <li>• <i>effecting contracts of insurance;</i></li> <li>• <i>carrying out contracts of insurance;</i></li> <li>• <i>safeguarding and administration of assets;</i></li> <li>• <i>arranging safeguarding and administration of assets;</i></li> </ul> <p><b>AND</b></p> <p>(cd) <b>MUST EITHER:</b></p> <ul style="list-style-type: none"> <li>• have a <i>requirement</i> that prohibits the <i>firm</i> from holding <del>and/or</del> <u>controlling client money, or both</u>;</li> </ul> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>• if it does not have such a <i>requirement</i>, only holds <del>or</del> <u>controls client money (or both)</u>, arising from an agreement under which <i>commission</i> is rebated to a <i>client</i>;</li> </ul> <p><b>AND</b></p> <p>(de) <b>PROVIDED</b> the fee-payer is <b>NOT</b> one of the following:</p> <ul style="list-style-type: none"> <li>• <i>a corporate finance advisory firm;</i></li> <li>• <i>a firm</i> for whom all of the applicable activities above are otherwise limited to carrying out <i>corporate finance business</i>;</li> <li>• <i>a firm</i> whose activities are limited to carrying out <i>venture capital business</i>;</li> <li>• <i>a firm</i> whose activities are limited to acting as an operator of a <i>regulated collective investment scheme</i>;</li> </ul>	

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.13 Advisory arrangers, dealers or brokers (not holding or controlling client money and/or assets)</p> <p>Continued...</p>	<ul style="list-style-type: none"> <li>• a <i>firm</i> whose activities are limited to carrying out <i>trustee activities</i>;</li> <li>• a <u><i>service company</i></u>.</li> </ul> <p><b>OR</b></p> <p>4. its permission</p> <p>(a) includes one or more of the following:</p> <ul style="list-style-type: none"> <li>• <del>advising on investments (except pension transfers and pension opt-outs);</del></li> <li>• <del>advising on pension transfers and pension opt-outs;</del></li> <li>• <del>advising on syndicate participation at Lloyd's;</del></li> </ul> <p>(b) <b>BUT MUST NOT</b> include: of the following:</p> <ul style="list-style-type: none"> <li>• <del>dealing in investments as agent;</del></li> <li>• <del>arranging (bringing about) deals in investments;</del></li> <li>• <del>making arrangements with a view to transactions in investments;</del></li> <li>• <del>dealing as principal in investments where the activity is carried on as a matched principal broker;</del></li> </ul> <p><b>AND</b></p> <p>(a) <b>PROVIDED</b> the fee payer is <b>NOT</b> one of the following:</p> <ul style="list-style-type: none"> <li>• <del>a corporate finance advisory firm;</del></li> <li>• <del>a firm for whom all of the applicable activities above are otherwise limited to carrying out corporate finance business;</del></li> <li>• <del>a firm whose activities are limited to carrying out venture capital business;</del></li> <li>• <del>a firm whose activities are limited to acting as an operator of a collective investment scheme;</del></li> <li>• <del>a firm whose activities are limited to carrying out trustee activities.</del></li> </ul>	

Activity group	Fee-payer falls in the activity group if	Tariff-base
<b>A.14 Corporate finance advisers</b>	the <i>firm</i> is carrying on <i>corporate finance business</i> ;  <b><u>PROVIDED</u></b> the fee-payer is <b><u>NOT a venture capital firm.</u></b>	(This part will be made at a later date.)  <b><u>APPROVED PERSONS</u></b>  <u>The number of persons approved to undertake the following controlled function:</u>  <b><u>CF23 corporate finance adviser function.</u></b>
<b>A.15</b>	This activity group does not apply for this period.	
<b>A.16 Pensions review levy firms</b>	it was liable to pay the Pensions Levy to the <i>PIA</i> in 2001/2002.	(This part will be made at a later date.)  <u>Percentage share of the amount paid towards <i>PIA</i>'s 2001/2002 pensions review levy by fee-payers in fee-block A.16.</u>
<b>A.17 Pensions review—SERPS adjustment firms</b>	it is subject to <i>PIA</i> rule 7.2.4 under the Designation of Pensions Review Provisions Instrument 2001.  <u>This activity group does not apply for this period.</u>	(This part will be made at a later date.)
<b>B</b>	<i>Firms</i> that have <del>it has been prescribed</del> designated as an operator of a prescribed market under the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001, <u>Statutory Instrument No. 996 of 2001/996</u> ;	(This part will be made at a later date.)  <u>Not applicable.</u>
<b>C</b>	<u>it is a service company.</u>	<u>Not applicable.</u>

**10 Table Part 8 – Periodic fees for certificates under article 54 of the Regulated Activities Order**

(This part will be made at a later date.)

- (1) The amount of the periodic fee payable under *SUP* 20.6.1R is £1,000.

## Annex B

### Amendments to the Professional firms sourcebook

In this annex, underlining indicates new text and striking through indicates deleted text.

#### PROF 6 Annex 1

Fees payable for the period from 1 April 2003 to 31 March 2004

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PROF 1 Table: Fees payable by ~~designated professional bodies~~ designated professional bodies

1

Name of <del>designated professional body</del> <u>designated professional body</u>	Amount payable	Due date
(Periodic fees will be made at a later date.)		
<u>The Law Society</u>	<u>£80,780</u>	<u>30 April 2003</u>
	<u>£13,970</u>	<u>1 September 2003</u>
<u>The Law Society of Scotland</u>	<u>£15,380</u>	<u>1 July 2003</u>
<u>The Law Society of Northern Ireland</u>	<u>£17,200</u>	<u>1 July 2003</u>
<u>The Institute of Actuaries</u>	<u>£10,270</u>	<u>1 July 2003</u>
<u>The Institute of Chartered Accountants in England and Wales</u>	<u>£51,590</u>	<u>30 April 2003</u>
	<u>£11,020</u>	<u>1 September 2003</u>
<u>The Institute of Chartered Accountants of Scotland</u>	<u>£14,750</u>	<u>1 July 2003</u>
<u>The Institute of Chartered Accountants in Ireland</u>	<u>£12,820</u>	<u>1 July 2003</u>
<u>The Association of Chartered Certified Accountants</u>	<u>£19,200</u>	<u>1 July 2003</u>
Any <i>person</i> seeking an order under section 326(1) of the <i>Act</i> (Designation of professional bodies)	£5,000	30 days after the order is granted



## Annex C

### Amendments to the Collective Investment Schemes sourcebook

In this annex, underlining indicates new text and striking through indicates deleted text.

#### CIS 18 Annex 1

#### Fees payable in relation to the period from 1 April 2003 to 31 March 2004

**1 Table: Part A – Application and notification fees payable in relation to the period from 1 April 2003 to 31 March 2004.**

<b>Section of the <del>Act</del> <u>Act</u> etc</b>	<b>Nature and purpose of <del>fee</del> <u>fee</u></b>	<b>Payable by</b>	<b>Amount of <del>fee</del> <u>fee</u></b>	<b><u>Umbrella scheme factor (Note 35)</u></b>
Regulation 12 of the <i>OEIC Regulations</i>	On application for an order declaring a <i>scheme</i> to be an <i>ICVC</i>	An applicant (Note <u>13</u> )	£1,200	<u>2</u>
Section 242	On application for an order declaring a <i>scheme</i> to be an <i>AUT</i>	An applicant (Note <u>13</u> )	£1,200	<u>2</u>
Section 264	On giving notice under section 264 of the <i>Act</i>	The <i>operator</i> (Note <u>24</u> )	£600	<u>2</u>
Section 270	On giving notice under section 270 of the <i>Act</i>	The <i>operator</i> (Note <u>24</u> )	£600	<u>2</u>
Section 272	On application for an order declaring a <i>scheme</i> to be an individually recognised overseas <i>scheme</i>	An applicant (Note <u>13</u> )	£14,000	<u>2</u>

**2 Table: Part B - Periodic fees payable in relation to the period from 1 April 2003 to 31 March 2004**

~~(This part will be made at a later date.)~~

<b><u>Nature and purpose of fee</u></b>	<b><u>Payable by</u></b>	<b><u>Amount of fee</u></b>	<b><u>Umbrella scheme factor (Note 35)</u></b>
<u>Periodic fee for an <i>ICVC</i></u>	<u>The <i>authorised corporate director</i></u>	<u>£760</u>	<u>2</u>
<u>Periodic fee for an <i>AUT</i></u>	<u>The <i>manager</i></u>	<u>£760</u>	<u>2</u>
<u>Periodic fee for a <i>scheme</i> recognised under section 264 of the <i>Act</i></u>	<u>The <i>operator</i></u>	<u>£760</u>	<u>2</u>
<u>Periodic fee for a <i>scheme</i> recognised under section 270 of the <i>Act</i></u>	<u>The <i>operator</i></u>	<u>£760</u>	<u>2</u>
<u>Periodic fee for a <i>scheme</i> recognised under section 272 of the <i>Act</i></u>	<u>The <i>operator</i></u>	<u>£4,400</u>	<u>2</u>

**3 Table: Notes**

13 The ~~fee~~ fee must accompany the application.

24 The ~~fee~~ fee must accompany the notice.

**35** For an *umbrella scheme* the fee is multiplied by the factor shown in the final column of the above tables.

## Annex D

### Amendments to the Recognised Investment Exchange and Recognised Clearing House sourcebook

In this annex, underlining indicates new text and striking through indicates deleted text.

#### REC 7 Annex 1

#### Fees payable in relation to the period from 1 April 2003 to 31 March 2004

R

#### 1 Table: Fees payable in relation to the period from 1 April 2003 to 31 March 2004

...

##### Part 1 – Periodic fees for UK recognised bodies in relation to the period from 1 April 2003 to 31 March 2004.

Name of UK <del>recognised body</del> recognised body	Amount payable	Due date
<del>(This part will be made at a later date.)</del>		
<u>CRESTCo Limited</u>	<u>£274,000</u>	<u>30 April 2003</u>
	<u>£258,000</u>	<u>1 September 2003</u>
<u>The International Petroleum Exchange of London Limited</u>	<u>£125,000</u>	<u>30 April 2003</u>
	<u>£230,000</u>	<u>1 September 2003</u>
<u>LIFFE Administration and Management</u>	<u>£280,000</u>	<u>30 April 2003</u>
	<u>£418,000</u>	<u>1 September 2003</u>
<u>The London Clearing House Limited</u>	<u>£274,000</u>	<u>30 April 2003</u>
	<u>£316,000</u>	<u>1 September 2003</u>
<u>The London Metal Exchange Limited</u>	<u>£227,500</u>	<u>30 April 2003</u>
	<u>£224,500</u>	<u>1 September 2003</u>
<u>The London Stock Exchange Limited</u>	<u>£342,500</u>	<u>30 April 2003</u>
	<u>£275,500</u>	<u>1 September 2003</u>
<u>OM London Exchange Limited</u>	<u>£143,000</u>	<u>30 April 2003</u>
	<u>£105,000</u>	<u>1 September 2003</u>
<u>virt-x plc</u>	<u>£126,000</u>	<u>30 April 2003</u>
	<u>£110,000</u>	<u>1 September 2003</u>
<u>Any other UK recognised investment exchange recognised as such by a recognition order made between 1 April 2003 and 31 March 2004</u>	<u>£150,000</u>	<u>30 days after the date on which the recognition order is made.</u>
<u>Any other UK recognised clearing house recognised as such by a recognition order made between 1 April 2003 and 31 March 2004</u>	<u>£250,000</u>	<u>30 days after the date on which the recognition order is made.</u>

##### Part 2 – Periodic fees for overseas recognised ~~overseas~~ bodies in relation to the period from 1 April 2003 to 31 March 2004.

Name of <u>overseas</u> recognised <del>overseas</del> body	Amount payable	Due date
---	----------------	----------

<del>(This part will be made at a later date.)</del>		
<u>Cantor Financial Futures Exchange</u>	<u>£9,000</u>	<u>1 July 2003</u>
<u>Chicago Mercantile Exchange</u>	<u>£9,000</u>	<u>1 July 2003</u>
<u>Chicago Board of Trade</u>	<u>£9,000</u>	<u>1 July 2003</u>
<u>Eurex Zurich</u>	<u>£9,000</u>	<u>1 July 2003</u>
<u>NASDAQ</u>	<u>£9,000</u>	<u>1 July 2003</u>
<u>NASDAQ LIFFE, LLC Futures Exchange</u>	<u>£9,000</u>	<u>1 July 2003</u>
<u>New York Mercantile Exchange</u>	<u>£9,000</u>	<u>1 July 2003</u>
<u>Swiss Exchange</u>	<u>£9,000</u>	<u>1 July 2003</u>
<u>Sydney Futures Exchange</u>	<u>£9,000</u>	<u>1 July 2003</u>
<u>Warenterminbourse Hannover</u>	<u>£9,000</u>	<u>1 July 2003</u>
<u>Any other overseas recognised body recognised as such by a recognition order made between 1 April 2003 and 31 March 2004</u>	<u>£9,000</u>	<u>Date the application is made.</u>
...		

**Annex E**

**Amendments to the Compensation sourcebook**

In this annex, underlining indicates new text and striking through indicates deleted text.

13.6.9 R Table: ~~Table~~: The contribution groups and tariff bases for the investment business sub-scheme ...

SUB-SCHEME	CONTRIBUTION GROUP (references to A7 etc are to the activity groups in part 7 of SUP 20 Ann 1R)	LEGAL BASIS FOR ACTIVITY (this is merely a summary of the basis in part 7 of SUP 20 Ann 1R; references to articles are to articles of the <i>Regulated Activities Order</i> )	TARIFF BASE (this is merely a summary of the base in part 7 of SUP 20 Ann 1R)
...	...	...	...
Designated investment business	A10 – dealing as principal	<i>Dealing in investments as principal</i> (Article 12), <del>but not (a) dealing as principal in investments if the investments are life policies; or acting as a matched principal broker.</del>	Number of traders
<u>Designated investment business</u>	<del>A.11</del> <u>execution only brokers</u>	<del>Any of the following: (a) dealing in investments as agent (article 19); (b) arranging (bringing about) deals in investments (article 21(1)); (c) making arrangements with a view to transactions in investments (article 22(2)); (d) dealing as principal in investments where the investments are life policies (article 12); (e) acting as a matched principal broker; but without permission to advise on investments (article 52).</del>	Commission income
Designated investment business	A12 – <u>advisory</u> brokers (excluding <del>execution only brokers and corporate finance advisers</del> ) – holding either <i>client money</i> or assets	Any of the following: (a) <i>dealing in investments as agent</i> (article 19); (b) <i>arranging (bringing about) deals in investments</i> (article 21(1)); (c) <i>making arrangements with a view to transactions in investments</i> (article 22(2)); with <i>permission</i> to: (i) <i>advise on investments</i> (article 49); (ii) hold <i>client money</i> ; and (iii) <i>safeguard and administer investments</i> (article 36).	Number of <i>approved persons</i>

Designated investment business	A13 – <u>advisory</u> brokers (excluding <del>execution only brokers and</del> <i>corporate finance advisers</i> ) – not holding either <i>client money</i> or assets	Any of the following: (a) <i>dealing in investments as agent</i> (article 19); (b) <i>arranging (bringing about) deals in investments</i> (article 21(1)); (c) <i>making arrangements with a view to transactions in investments</i> (article 22(2)); with <i>permission to advise on investments</i> (article 49); but not to (i) hold <i>client money</i> ; and (ii) <i>safeguard and administer investments</i> (article 36).	Number of <i>approved persons</i>
...	...	...	...

## Annex F

### Amendments to Dispute resolution: Complaints sourcebook

In this annex, underlining indicates new text and striking through indicates deleted text.

#### DISP 5 Annex 1R: Annual

...

#### 2 Table: Fee tariffs for industry blocks

Industry block	Tariff base	General levy payable by firm
...	...	...
10 – Corporate finance advisers	Flat fee	Levy of <u>£75</u>
<del>11 Execution only arrangers, dealers or brokers</del>	<del>Flat fee</del>	<del>Levy of 75</del>
...	...	...

## Annex G

### Amendments to the Authorisation manual

In this annex, underlining indicates new text and striking through indicates deleted text.

#### AUTH 4 Annex 1R

Authorisation fees payable in relation to the period from 1 April 2003 to 31 March 2004

...

### 3 Table Moderately Complex Cases R

Activity grouping	Description
A.1	<i>E-money issuers only</i>
A.5	<i>Managing agents at Lloyd's</i>
A.7	Fund managers ( <del>holding or controlling client money and or assets</del> )
A.9	<i>Operators, trustees and depositaries of collective investment schemes</i>
A.10	<i>Firms dealing as principal</i>
A.11	<del>Execution only arrangers, dealers or brokers</del>
C	<i><u>Service companies</u></i>

...



**SUPERVISION MANUAL (PASSPORTING GUIDANCE)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

**Commencement**

- B. This instrument comes into force on 1 July 2003.

**Amendments to the Supervision manual**

- C. The Supervision manual is amended by inserting, as SUP App 3, the provisions in Annex A to this instrument.

**Amendments to the Glossary**

- D. The Glossary is amended in accordance with Annex B to this instrument.

**Citation**

- E. This instrument may be cited as the Supervision Manual (Passporting Guidance) Instrument 2003.

By order of the Board  
15 May 2003

## **Annex A**

### **Amendments to SUP**

#### **Appendix 3**

##### **Contents**

- 3.1 Application
- 3.2 Purpose
- 3.3 Background
- 3.4 Introduction
- 3.5 The right of establishment
- 3.6 Freedom to provide services
- 3.7 Simultaneous exercise of the freedom to provide services and the right of establishment
- 3.8 Avoidance
- 3.9 Mapping of the Banking Co-ordination Directive and the Investment Services Directive to the Regulated Activities Order
- 3.10 Mapping of Insurance Directives to the Regulated Activities Order

## Guidance on passporting issues

### 3.1 Application

3.1.1 G This appendix applies to all *firms* when passporting.

### 3.2 Purpose

3.2.1 G The purpose of this appendix is to give *guidance*:

- (1) to *UK firms* on some of the issues that are involved in addressing the questions “What is a *branch*?” and “Where is a service provided?” (see *SUP App 3.5* (The right of establishment) and *SUP App 3.6* (Freedom to provide services));
- (2) to all *firms* on the relationship between *regulated activities* and activities passported under the *Single Market Directives* (see *SUP App 3.9* (Mapping of the Investment Services Directive and Banking Consolidation Directive to the Regulated Activities Order)).

This *guidance* refers to comments made by the European Commission. These comments do not themselves have the force of legislation (see *SUP App 3.3.5G* (Interpretative communications)).

### 3.3 Background

#### The Treaty establishing the European Community

3.3.1 G The European Community Treaty (the ‘*Treaty*’), as amended by later Treaties, established in EC law the rights of freedom of establishment and freedom to provide services in the European Community.

3.3.2 G The *Treaty* provides the framework for the provision of banking, insurance and investment business, while the *Single Market Directives* clarify the rights and freedoms within that framework.

#### EC and EEA

3.3.3 G The agreement on the *European Economic Area*, signed at Oporto on 2 May 1992, extends EC legislation to any *EEA State* that is not part of the European Community. Any references to an EC Member State in this appendix should, therefore, be read as referring to an *EEA State*.

#### Interpretative communications

3.3.4 G In 1997, the European Commission published an interpretative communication (Freedom to provide services and the interests of the general good in the Second Banking Directive (97/C 209/04)) (the text of this directive and the First Banking Directive is now consolidated in the *Banking*

*Consolidation Directive*). The European Commission's objective in publishing this communication was to explain and clarify the Community rules. The European Commission deemed it desirable "...to restate in a Communication the principles laid down by the Court of Justice and to set out its position regarding the application of these Principles to the specific problems raised by the Second Banking Directive".

- 3.3.5 G In 2000, the European Commission published a further interpretative communication (Freedom to provide services and the general good in the insurance sector (2000/C43/03)). This allowed the European Commission to publicise its own interpretation of the rules on the freedom to provide services.
- 3.3.6 G The European Commission has not produced a communication on the *Investment Services Directive*. It is arguable, however, that the principles in the communication on the Second Banking Directive can be applied to *investment services*. This is because article 11 of the *Investment Services Directive* (containing provisions relating to conduct of business rules) also applies to the *investment services* of *firms* operating under the *Banking Consolidation Directive*.
- 3.3.7 G In giving its views, communications made by the European Commission have the status of guidance and are not binding on the national courts of *EEA States*. This is because it is the European Court of Justice that has ultimate responsibility for interpreting the *Treaty* and secondary legislation. Accordingly, the communications "...do not prejudge the interpretation that the Court of Justice of the European Communities, which is responsible in the final instance for interpreting the *Treaty* and secondary legislation, might place on the matter at issue." (European Commission interpretative communication: Freedom to provide services and the general good in the insurance sector (C(99) 5046). However, the Courts may take account of European Commission communications when interpreting the *Treaty* and secondary legislation.
- 3.3.8 G *Firms* should also note that European Commission communications do not necessarily represent the views taken by all *EEA States*.

### **E-commerce**

- 3.3.9 G The *E-Commerce Directive* covers services provided at a distance by means of electronic equipment for the processing (including digital compression) and storage of data. The services would normally be provided in return for remuneration and must be provided at the individual request of a recipient (see recital 17 of the *E-Commerce Directive*). The Directive implements the *country of origin* approach to regulation. This approach makes *firms* subject to the conduct of business requirements of the *EEA State* from which the service is provided. This is subject to certain derogations (see *SUP App 3.3.11G*).
- 3.3.10 G The *E-Commerce Directive* does not affect the responsibilities of *Home*

*States* under the *Single Market Directives*. This includes the obligation of a *Home State regulator* to notify the *Host State regulator* of a *firm's* intention to establish a *branch* in, or provide *cross border services* into, the other *EEA State*.

3.3.11 G There are, however, general derogations from the internal market provisions under article 3(3) of the *E-Commerce Directive*. The derogations include consumer contracts, the permissibility of unsolicited e-mail and certain insurance services (both life and non-life). Where these derogations apply, the *EEA States* in which the recipients of the service are based may continue to be able to impose their own requirements.

3.3.12 G Further details concerning the impact of the *E-Commerce Directive* on *UK firms* are available in *ECO*.

### **3.4 Introduction**

3.4.1 G The *Treaty* lays down central principles governing the legal framework for freedom of establishment and the free movement of services in the European Community. There are, however, a number of areas where the legal position is not clear. This includes, for example, identifying whether a service is provided through an establishment, where the issues involved are complex. Therefore, this Appendix is intended to provide *guidance* but cannot be regarded as comprehensive. Ultimately, the construction of the *Treaty* and relevant Directive provisions is a matter for the European Court of Justice.

3.4.2 G *SUP 13.5* (Notices of intention) sets out the notification requirements for a *firm* seeking to establish a *branch* or provide *cross border services*. As *firms* will note, the decision whether a passport notification needs to be made will be a matter of interpretation. The onus is on *firms* to comply with the requirements of the *Act* and, where relevant, the laws of other *EEA States*. So, in cases of doubt, *firms* should obtain their own legal advice on the specific issues involved.

3.4.3 G Blanket notification is the practice of the *Home State regulator* notifying all *Host State regulators* in respect of all activities regardless of any genuine intention to carry on the activity. This practice is discouraged by the *FSA*. However, a *firm* may be carrying on activities in the *United Kingdom* or elsewhere in a way that necessarily gives rise to a real possibility of the provision of services in other *EEA States*. In such cases, the *firm* should consider with its advisers whether it should notify the relevant authorities and include that possibility in its business plan.

### **3.5 The right of establishment**

3.5.1 G Article 43 (formerly 52) of the *Treaty* grants nationals of an *EEA State* the right to establish themselves in another *EEA State* and, if they are already established in one *EEA State*, to set up agencies, branches or subsidiaries in any other *EEA State*.

### Permanent nature of presence in a Host State

- 3.5.2 G The right of establishment assumes a non-temporary presence in the *Host State*.
- 3.5.3 G The European Commission has issued statements about the treatment of a *credit institution* or *insurance undertaking* that maintains a permanent presence in the *EEA State* in which it provides services. It has stated that such an institution or undertaking comes, in principle, under the *Treaty* provisions on the right of establishment. The European Court of Justice has ruled that: "A national of a Member State who pursues a professional activity on a stable and continuous basis in another Member State where he holds himself out from an established professional base to, amongst others, nationals of that State, comes under the provisions of the...right of establishment, and not those...relating to services" (Case C-55/94 Gebhard [1995] ECR I-4165). The European Commission has also indicated that a banking activity exercised within a territory in a durable, frequent or continuous manner by a *credit institution* exercising the freedom to provide services, may fall under the right of establishment.
- 3.5.4 G On the basis of previous cases, the European Commission's view is that:
- (1) a *credit institution* or *insurance undertaking* may be working within the territory of an *EEA State* in order to carry out a limited number of tasks in connection with existing customers. Such a *credit institution* or *insurance undertaking* could have the infrastructure necessary to perform these tasks without being deemed to be 'established' within the meaning laid down in Community law;
  - (2) if, however, the *credit institution* or *insurance undertaking* went beyond the limited number of tasks referred to in (1), it could fall within the scope of the right of establishment. This may arise if, for example, it were to approach nationals of the *Host State* offering banking services in the same way as a *branch* would do.

### Definition of 'branch'

- 3.5.5 G The *Single Market Directives* state the following about the meaning of "branch":
- (1) Article 1 of the *Banking Consolidation Directive* provides that a *branch* is "... a place of business which forms a legally dependent part of a credit institution and which carries out directly all or some of the transactions inherent in the business of credit institutions...".
  - (2) Article 1 of the *Investment Services Directive* provides that a branch is "...a place of business which is a part of an investment firm, which has no legal personality and which provides investment services for which the investment firm has been authorised...".

- (3) Article 1 of the *Consolidated Life Directive* and Article 3 of the *Second Non-Life Directive* provide that "...any permanent presence of an undertaking in the territory of a Member State shall be treated in the same way as an agency or branch, even if that presence does not take the form of a branch or agency, but consists merely of an office managed by the undertaking's own staff or by a person who is independent but has permanent authority to act for the undertaking as an agency would."

3.5.6 G The *Single Market Directives* state that all a *firm's* places of business in any particular *EEA State* are treated as a single branch. So, once a *firm* has satisfied the conditions for establishing a branch in another *EEA State* as referred to in *SUP* 13.5.1G (Specified contents: notice of intention to establish a branch), there is no requirement to follow these procedures in respect of the establishment of further places of business in that same *EEA State*. It should be noted that different principles may apply in respect of the overseas territories of some *EEA States*. *Firms* should also note that changes to a *firm's* places of business are likely to result in changes to the *firm's* requisite details (see *SUP* 13.6 (Changes to branches)). With regard to the position in Gibraltar, *firms* should be aware of the requirements of the Financial Services and Markets (Gibraltar) Order 2001 (2001/3084).

#### **Use of an intermediary or independent person: branches**

3.5.7 G The European Court of Justice has held that, if a *firm* has access to an independent *person* or intermediary established in the territory of an *EEA State*, it may fall within the rules on the right of establishment. This applies if the *firm* maintains the access so as to carry on activities in that *EEA State* on a stable and continuous basis. The European Court of Justice has ruled that:

- (1) "...an insurance undertaking of another Member State which maintains a permanent presence in the Member State in question comes within the scope of the Treaty on the right of establishment, even if that presence does not take the form of a branch or agency, but consists merely of an office managed by the undertaking's own staff or by a person who is independent but authorised to act on a permanent basis for the undertaking, as will be the case with an agency." (Case 205/84 *Commission v Germany* [1986] ECR 3755).

- (2) "One of the essential characteristics of the concepts of branch or agency is the fact of being subject to the direction and control of the parent body." (the *De Bloos* case (Case 14/76 [1976] ECR 1459)).

3.5.8 G The European Court of Justice has held that "The concept of branch, agency or other establishment implies a place of business which has the appearance of permanency, such as the extension of a parent body, has a management and is materially equipped to negotiate business with third parties, so that the latter, although knowing that there will, if necessary, be a legal link with the parent body, the head office of which is abroad, do not have to deal directly with

such parent body but may transact business at the place of business constituting the extension.” (the Somafer case (Case 33/78 [1978] ECR 2183)).

3.5.9 G The European Commission considers that, for the use of an intermediary or independent *person* to result in a *firm* possibly falling within the scope of the right of establishment, three criteria must be met. These criteria are as follows:

- (1) the intermediary or independent *person* must have received a permanent mandate or brief which must:
  - (a) be long-term and continuous and not be limited in time or be a one-off instruction; and
  - (b) relate to the activities that are part of the *insurance undertaking*'s or *credit institution*'s objectives;
- (2) the intermediary or independent *person* must be subject to the direction (in the case of insurance) or management (in the case of banking) and control of the *credit institution* or *insurance undertaking* he represents. The European Commission believes that "an exclusive brief received by an independent intermediary from a single insurer is an indication that the intermediary is subject to the direction and control of that insurer". To ascertain if this condition is met, a check should be made, in particular, to:
  - (a) see whether the intermediary or independent *person* is free to organise his or her own work and to decide what proportion of time to devote to the *credit institution* or *insurance undertaking*; and
  - (b) consider whether the *intermediary* or independent *person* can represent competitors or is bound by an exclusive agreement;
- (3) the *intermediary* or independent *person* must be able to commit the *credit institution* or *insurance undertaking*. To satisfy this condition the following will apply:
  - (a) the acts or decisions of the intermediary or independent *person* must be able to commit the *insurance undertaking* or *credit institution* in transactions with third parties, as determined in the case law of the European Court;
  - (b) the intention on the part of the *insurance undertaking* or *credit institution* to be directly committed may also be shown by the intermediary or independent *person*'s brief;
  - (c) the intermediary or independent *person* can make a complete offer on behalf of a *credit institution* or *insurance undertaking*



even if only the *credit institution* or *insurance undertaking* can sign the contract. This condition is not met if the *credit institution* or *insurance undertaking* can reject the proposal or refuse to sign the contract.

3.5.10 G The European Commission has stated in its communications that, if the use of an intermediary or independent *person* results in a *credit institution* or *insurance undertaking* falling within the scope of the right of establishment, the *person* would not constitute a *branch* because it is independent and not part of the *firm's* business (see SUP App 3.5.5G (Definition of branch)). However, in such cases, a passporting notification would be required.

3.5.11 G If an *insurance undertaking* provides services within the territory of another *EEA State* under the freedom to provide services, the European Commission has indicated that it can use the services of independent *persons* in that *EEA State* without falling within the scope of the right of establishment. It has also indicated that this can be either upstream or downstream of the transaction without establishing a *branch*. Examples include:

- (1) local experts who assess the risks to be covered but who do not conclude *contracts of insurance* and whose activity is limited to forwarding insurance proposals;
- (2) local medical services;
- (3) a permanent structure for collecting premiums or receiving notices of claims;
- (4) canvassers who do not conclude *contracts of insurance* and whose activity is limited to forwarding insurance proposals.

Where local experts conclude claims settlements, they may be regarded as performing activities falling within the scope of establishment.

3.5.12 G In the case of *credit institutions*, the European Commission has also indicated that marketing services through an intermediary that is itself a *credit institution* should not require prior notification as the intermediary will be supervised in its activities by its *Home State*.

#### **Automatic telling machines as a branch**

3.5.13 G Automatic telling machines (ATMs) capable of performing the banking or insurance activities listed in the *Single Market Directives* may form the only presence of a *credit institution* or *insurance undertaking* in a Member State. The European Commission considers that, where this is the case, they are unlikely to be covered by the right of establishment. The *FSA* considers that ATMs can only be considered to be an establishment if the three criteria referred to in SUP App 3.5.9G (Use of an intermediary or independent person) are satisfied to the extent that they apply to a *credit institution* or an *insurance undertaking*.

### 3.6 Freedom to provide services

- 3.6.1 G Article 49 (Services) (formerly article 59) of the *Treaty* grants to EC nationals established in one *EEA State* the freedom to provide *cross border services* to the nationals of other *EEA States*.

#### How services may be provided

- 3.6.2 G Under the *Treaty*, the freedom to provide services within the EC may be exercised in three broad ways:
- (1) where the provider of a service moves temporarily to another *EEA State* in order to provide the service;
  - (2) where the service is provided without either the provider or the recipient moving (in this situation the provision, and receipt, of the service may take place by post, telephone or fax, through computer terminals or by other means of remote control);
  - (3) where the recipient of a service moves temporarily to another *EEA State* in order to receive (or, perhaps, commission the receipt of) the service within that State.
- 3.6.3 G Under the *Single Market Directives*, however, *EEA rights* for the provision of services are concerned only with services provided in one of the ways referred to in *SUP App 3.6.2G* (1) and (2) (How services may be provided).

#### Notification

- 3.6.4 G The *Single Market Directives* require *credit institutions*, *insurance undertakings* and *investment firms* to make a notification to the *Home State* before providing *cross border services* into the *Host State's* territory for the first time under the freedom to provide services.

#### Place of supply

- 3.6.5 G In the opinion of the European Commission (and in the wording of the *Single Market Directives*) "only activities carried on within the territory of another Member State should be the subject of prior notification" (Commission interpretative communication: Freedom to provide services and the interests of the general good in the Second Banking Directive (97/C 209/04)). In determining, for the purposes of notification, whether a service is to be provided 'within' another *EEA State*, it is necessary to determine the place of supply of the service.
- 3.6.6 G An *insurance undertaking* that effects *contracts of insurance* covering risks or commitments situated in another *EEA State* should comply with the notification procedures for the provision of services within that *EEA State*.

The location of risks and commitments is found by reference to the rules set out in paragraph 6 of schedule 12 to the *Act*, which derive from article 1 of the *Consolidated Life Directive* and article 2 of the *Second Non-Life Directive*. It may be appropriate for insurers to take legal advice as to how these rules are interpreted and applied in other *EEA States*. The need to passport may arise because of only one of the risks covered by an insurance policy. This includes, for example, where a policy covers a number of property risks and one of those properties is in another *Member State*.

- 3.6.7 G In respect of banking services, the European Commission believes that "...to determine where the activity was carried on, the place of provision of what may be termed the 'characteristic performance' of the service i.e. the essential supply for which payment is due, must be determined" (Commission interpretative communication: Freedom to provide services and the interests of the general good in the Second Banking Directive (97/C 209/04)). In the *FSA's* view, this requires consideration of where the service is carried out in practice.
- 3.6.8 G The *FSA* is of the opinion that *UK firms* that are *credit institutions* and *ISD investment firms* should apply the 'characteristic performance' test (as referred to in *AUTH* 3.6.7G) when considering whether prior notification is required for services business. *Firms* should note that other *EEA States* may take a different view. Some *EEA States* may apply a solicitation test. This is a test as to whether it is the consumer or the provider that initiates the business relationship.
- 3.6.9 G In the case of a *UK firm* conducting portfolio management, for example, this would mean looking at where the investment decisions and management are actually carried on in order to determine where the service is undertaken. Similarly, a *UK* stockbroker that receives orders by telephone from a customer in France for execution on a *UK* exchange may be deemed to be dealing or receiving and transmitting orders within the territory of the *United Kingdom*. In such a case, whether the *firm* solicited the overseas investor would be irrelevant.
- 3.6.10 G Where, however, a *credit institution* or *ISD investment firm*:
- (1) intends to send a member of staff or a temporarily authorised intermediary to the territory of another *EEA State* on a temporary basis to provide financial services; or
  - (2) provides advice, of the type that requires notification under either the *Investment Services Directive* or the *Banking Coordination Directive*, to customers in another *EEA State*;
- the *firm* should make a prior notification under the freedom to provide services.

### **Temporary activities**

3.6.11 G The key distinction in relation to temporary activities is whether a *firm* should make its notification under the freedom of establishment in a *Host State*, or whether it should notify under the freedom to provide services into a *Host State*. It would be inappropriate to discuss such a complex issue in *guidance* of this nature. It is recommended that, where a *firm* is unclear on the distinction, it should seek appropriate advice. In either case, where a *firm* is carrying on activities in another *Member State* under a *Single Market Directive*, it should make a notification.

3.6.12 G The European Commission has made the following statements on the subject of temporary activities:

- (1) "...the fact of temporarily visiting the territory of a Member State to carry on an activity preceding (e.g. survey of property prior to granting a loan) or following (incidental activities) the essential activity does not, in the Commission's view, constitute a situation that is liable in itself to be the subject of prior notification. The same is true of any visits which a credit institution may pay to a customer if such visits do not involve the provision of the characteristic performance of the service that is the subject of the contractual relationship.";
- (2) "...temporarily visiting the territory of a Member State to conclude contracts, prior to the exercise of a banking activity should not be regarded as exercising the activity itself.";
- (3) "...if the service is supplied to a beneficiary who has gone in person for the purpose of receiving that service, to the Member State where the institution is established, prior notification should not take place."

3.6.13 G If, however, the *credit institution* sends a member of staff or a temporarily authorised intermediary to the territory of another *EEA State* to provide the 'characteristic performance' of banking services to its non-resident customers, the European Commission believes that prior notification is necessary.

### **Non-resident customers of banks**

3.6.14 G The European Commission is of the opinion that "a bank may have non-resident customers without necessarily pursuing the activities concerned within the territory of the Member State where the customers have their domicile" (Commission interpretative communication: Freedom to provide services and the interests of the general good in the Second Banking Directive (97/C 209/04)).

### **Monitoring procedures**

3.6.15 G The *FSA* considers that, in order to comply with *Principle 3: Management and control* (see *PRIN 2.1.1R*), a *firm* should have appropriate procedures to monitor the nature of the services provided to its customers. Where a *UK firm* has non-resident customers but has not notified the *EEA*

*State* in which the customers are resident that it wishes to exercise its freedom to provide services, the *FSA* would expect the *firm's* systems to include appropriate controls. Such controls would include procedures to prevent the supply of services covered by the *Single Market Directives* in the *EEA State* in which the customers are resident if a notification has not been made and it is proposed to provide services otherwise than by remote communication. In respect of *insurance business*, the *insurer's* records should identify the location of the risk at the time the policy is taken out or last renewed. That will, in most cases, remain the location of the risk thereafter, even if, for example, the *policyholder* changes his habitual residence after that time.

### **Remote communication**

3.6.16 G In respect of banking services, the European Commission stated in its interpretative communication: Freedom to provide services and the interests of the general good in the Second Banking Directive (97/C 209/04) that:

"The provision of distance banking services, for example via the Internet, should not, in the European Commission's view, require prior notification, since the supplier cannot be deemed to be pursuing its activities in the customer's territory". This is because, as stated in *SUP App 3.5.7G* (Use of an intermediary or independent person), the European Commission believes that banking services are deemed to be provided where the 'characteristic performance' of the service is carried out, that is, where the service is carried out in practice. The European Commission notes, however, that "as long as the Court has not ruled on this issue, any credit institution is at liberty to choose, for reasons of legal certainty, to make use of the notification procedures provided for in the Second Banking Directive even if, according to the criteria proposed above, notification may not be necessary".

3.6.17 G In respect of *insurance business*, the European Commission, in its interpretative communication: Freedom to provide services and the general good in the insurance sector (2000/C 43/03), stated that:

- (1) "The use of remote means of communication (telephone, fax the press etc) and in particular electronic commerce (e.g. via the Internet) to conclude insurance policies covering a risk (or commitment) situated in a Member State other than the Member State of establishment of an insurer should be regarded as insurance business carried on under the freedom to provide services with no movement on the part of the contracting parties.";
- (2) "...the place where the technological means used for providing the service are located (e.g. where the Internet server is installed)" may not be relevant in determining the Member State of establishment of the *insurance undertaking* concluding a policy by remote means which will be its head office or branch; and
- (3) "...an insurance undertaking operating from one EC State which is prepared to conclude via the Internet contracts of insurance covering risks or commitments situated in other EC States will probably be

required to comply with the notification procedures for the provision of services."

- 3.6.18 G However, the European Commission has also stated in its interpretative communication: Freedom to provide services and the general good in the insurance sector (2000/C 43/03) that:
- (1) "...the use of electronic commerce methods for the sole purposes of advertising, providing commercial information or enhancing awareness of the insurance undertaking cannot be regarded as an insurance activity;" and
  - (2) "... it is out of the question to make such advertising and information activities subject to the notification procedures laid down by the Third Directives (Article 34 and following) which was designed for actual insurance activities carried on under the freedom to provide services."

3.6.19 G The *FSA*, therefore, believes that a notification is required only where there is an intention to provide the services themselves within the territory of the other *EEA State*.

3.6.20 G However, the *E-Commerce Directive* (see *SUP App 3.3.10G (E-commerce)*), which came into force in January 2002, has an effect on this matter. This Directive provides that, subject to certain limited derogations, the *country of origin* regulates e-commerce services.

#### **Automatic telling machines : provision of services**

3.6.21 G If a fixed automatic telling machine , capable of performing banking or insurance activities, is the only presence of a *credit institution* or *insurance undertaking* in an *EEA State*, the European Commission believes that "...it may be possible to treat it as a provision of services in the territory of that Member State." This right exists, according to the European Commission, regardless of the presence of a *person* or *company* in the *EEA State* responsible for equipping it or dealing with technical problems.

#### **Use of an intermediary or independent person: freedom to provide services**

3.6.22 G The European Commission's view is that, if a bank uses an intermediary to provide temporary or occasional banking services within the territory of an *EEA State*, it must first give notification under the freedom to provide services.

3.6.23 G Where the duties of an intermediary consist only of seeking customers for a *credit institution*, however, the European Commission believes that the *credit institution* cannot be considered to be necessarily intending to carry on its activities in the territory of the *EEA State*. So, notification may not be required. However, *UK firms* should note that some *EEA States* do not take this view. Therefore, *UK credit institutions* should confirm the position with

the relevant *Host State regulator* before engaging an intermediary in that *EEA State* to seek customers.

- 3.6.24 G In respect of *insurance undertakings*, examples of the use of independent *persons* which, in the European Commission's view, may fall under the freedom to provide services, include situations where:
- (1) the independent *person* works for an *insurance undertaking* which has not given him an exclusive brief (even if another *insurance undertaking* has given the independent *person* an exclusive brief in respect of certain other *classes* of insurance); or
  - (2) the independent *person* negotiates contacts with customers if those contracts can be rejected by the *insurance undertaking*.

### **Membership of regulated markets**

- 3.6.25 G The *FSA* is of the opinion that where a *UK firm* becomes a member of a *regulated market* that has its registered office or, if it has no registered office, its head office, in another *EEA State*, the same principles as in the 'characteristic performance' test should apply. Under this test, the fact that a *UK firm* has a screen displaying the exchange's prices in its *UK office* does not mean that it is dealing within the territory of the *Home State* of the *regulated market*.
- 3.6.26 G *Firms* are reminded of their rights, under article 15(1) of the *Investment Services Directive*, to become members of, or have access to, the *regulated markets* in other *Member States*.
- 3.6.27 G *Firms* should note that, in circumstances where the *FSA* takes the view that a notification would not be required, other *EEA States* may take a different view.

### **Financial promotion**

- 3.6.28G In relation to the need for a *credit institution* to notify where its advertising is available to *persons* in a particular *Member State*, the European Commission, in its interpretative communication (Freedom to provide services and the interests of the general good in the Second Banking Directive (97/C 209/04)), stated that:
- (1) "the prior existence of advertising or an offer cannot be linked with the need to comply with the notification procedure"; However the existence of an advertisement may indicate that there is an intention to provide services which would trigger the need for notification;
  - (2) "canvassing customers from a distance does not necessarily mean that an institution plans to provide services within the territory of another *Member State*."

- 3.6.29 G The European Commission's rationale for the views referred to in *SUP App* 3.6.28G (1) and (2) is that "...for the sake of simplicity and in keeping with the Second Directive, all forms of advertising, targeted or otherwise, and all offers of service made at a distance by any means whatsoever (e.g. post, fax, electronic mail) should be exempt from the requirements of prior notification. Only if a credit institution plans to carry on its activities within the territory of the customer's country under the freedom to provide services... will it be obliged to notify" (Commission interpretative communication: Freedom to provide services and the general good in the insurance sector' (2000/C 43/03).
- 3.6.30 G In relation to *insurance undertakings*, the European Commission has expressed the view that "... in accordance with the Third Directives, all forms of advertising by whatever means (mail, fax, electronic mail etc) should not be subject to the notification procedures referred to in Article 34 et seq. of the Third Directives. It is only if the insurance undertaking plans to carry on insurance activities under the freedom to provide services and only if it offers insurance products to potential clients established in another Member State that it must comply with the notification procedure." (Commission interpretative communication: Freedom to provide services and the general good in the insurance sector (2000/C 43/03 ).
- 3.6.31 G The European Commission has not expressed a view about the circumstances where notification may be needed where *investment firms* advertise in other Member States. In the *FSA's* opinion, the European Commission's views on the need for *credit institutions* and *insurance undertakings* to notify their intention to provide services in another *Member State* can be applied, in general terms, to *investment firms*. However, given the broad range of activities covered by the *Investment Services Directive*, due account may need to be taken of the particular circumstances in which the *investment firm's* advertisements are made available to *persons* in the *United Kingdom*. In this respect, it is notable that there is no concept under the *Regulated Activities Order* of offering to carry on a *regulated activity* being a *regulated activity* in its own right. This is a change to the earlier position under the Financial Services Act 1986. This change seems consistent with the fact that overseas *investment firms* may be able to make their advertisements available to *persons* in the *United Kingdom* without needing to notify under the *Investment Services Directive*.

### 3.7 Simultaneous exercise of the freedom to provide services and the right of establishment

- 3.7.1 G The European Commission believes that a *credit institution*, an *investment firm* or an *insurance undertaking* can simultaneously carry on business in the same *EEA State* under the freedom to provide services and under the right of establishment. This is so, even where the same activity is involved. Separate notifications should be made for each. The *credit institution*, *investment firm* or *insurance undertaking* should be able to link the activity concerned to either the right of establishment or to the freedom to provide services.



### 3.8 Avoidance

- 3.8.1 G The European Commission has stated that "it should be ensured that an institution is not able artificially to connect its activities to the arrangements governing freedom to provide services as a way of side-stepping the legal and tax framework which would apply in the same activity were considered to be carried on by a branch or by any other form of establishment" (Commission interpretative communication: Freedom to provide services and the interests of the general good in the Second Banking Directive' (97/C 209/04)).
- 3.8.2 G The European Court has also acknowledged that, in certain circumstances, an *EEA State* "is entitled to take steps to prevent a service provider...from exercising the freedom to provide services...". The circumstances are where "a service provider whose activity is entirely or mainly directed towards its territory, but who has become established in another Member State in order to circumvent the rules of professional conduct that would apply to him if he were established in the territory of the State where he entirely or mainly pursues his activities..." (Commission interpretative communication: Freedom to provide services and the interests of the general good in the Second Banking Directive (97/C 209/04)).

### 3.9 Mapping of the Investment Services Directive and Banking Consolidation Directive to the Regulated Activities Order

- 3.9.1 G The following Tables 1 and 2 provide an outline of the *regulated activities* and *specified investments* that may be of relevance to *firms* considering undertaking *passported activities* under the *Banking Consolidation Directive* or the *Investment Services Directive*. The tables may be of assistance to *UK firms* that are thinking of offering financial services in another *EEA State* and to *EEA firms* that may offer those services in the *United Kingdom*.
- 3.9.2 G The tables provide a general indication of the *investments* and activities specified in the *Regulated Activities Order* that may correspond to categories provided for in either the *Banking Consolidation Directive* or the *Investment Services Directive*. The *guidance* does not cover the *UCITS Directive*. The tables do not provide definitive *guidance* as to whether a *firm* is carrying on an activity that is capable of being passported, nor do the tables take account of exceptions that remove the effect of articles. Whether a *firm* is carrying on a *passported activity* will depend on the particular circumstances of the *firm*. If a *firm's* activities give rise to potential passporting issues, it should obtain specialist advice on the relevant issues.
- 3.9.3 G In considering the issues raised in the tables, *firms* should note that:
- (1) article 64 of the *Regulated Activities Order* (Agreeing to carry on specific kinds of activity) applies in respect of agreeing to undertake the specified activity; and

- (2) article 89 of the *Regulated Activities Order* (Rights to or interests in investments) applies in respect of rights to and interests in the types of *investments* to which the category applies.

<b>Table 1: BCD activities</b>		<b>Part II RAO Activities</b>	<b>Part III RAO Investments</b>
1.	Acceptance of deposits and other repayable funds from the public	Article 5	Article 74
2.	Lending	Article 61, 64	Article 88
3.	Financial leasing		
4.	Money transmission services		
5.	Issuing and administering means of payment (eg credit cards, travellers' cheques and bankers' drafts)		
6.	Guarantees and commitments		
7.	Trading for own account or for account of customers in:  (a) money market instruments  (b) foreign exchange  (c) financial futures and options  (d) exchange and interest rate instruments  (e) transferable securities	Article 14, 21, 25 (see Note 1), 64 Article 14, 21, 25, 64 Article 14, 21, 25, 64 Article 14, 21, 25, 64 Article 14, 21, 25, 64	Article 77, 78, 80, 83-85, 89 Article 83-85, 89 Article 83-85, 89 Article 83-85, 89 Article 76-81, 89
8.	Participation in share issues and the provision of services relating to such issues	Article 14, 21, 25, 53, 64	Article 76-81, 89
9.	Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings	Article 14, 21, 25, 53, 64	Article 76-80, 83-85, 89
10.	Money broking	Article 25, 64	Article 77, 78, 89
11.	Portfolio management and advice	Article 14, 21, 25, 37, 53, 64	Article 76-81, 83-85, 89

12.	Safekeeping and administration of securities	Article 40, 45, 64	Article 76-81, 83-85, 89
13.	Credit reference services		
14.	Safe custody services	Article 64	Article 76-81, 83-85, 89

Note 1. The *BCD* activity of trading for account of customers does not extend to the *regulated activity* of making arrangements with a view to transactions in investments under article 25(2) of the *Regulated Activities Order* unless the arrangements bring about or would bring about particular transactions.

<b>Table 2: ISD activities</b>		<b>Part II RAO Activities</b>	<b>Part III RAO Investments</b>
	<b>1. Core services</b>		
1.	(a) Reception and transmission, on behalf of investors, of orders in relation to one or more of the relevant instruments	Article 25 (see Note 1), 64	Article 76-81, 83-85, 89
	(b) Execution of such orders other than for own account	Article 21, 64	Article 76-81, 83-85, 89
2.	Dealing in any of the relevant instruments for own account	Article 14, 64	Article 76-81, 83-85, 89
3.	Managing portfolios of investments in accordance with mandates given by investors on a discretionary, client-by-client basis where such portfolios include one or more of the relevant instruments	Article 14, 21, 25, 37, 53, 64	Article 76-81, 83-85, 89
4.	Underwriting in respect of issues of any of the relevant instruments and/or the placing of such issues	Article 14, 21, 25, 64	Article 76-81, 83-85, 89
	<b>2. Non-core services</b>		
1.	Safekeeping and administration services	Article 40, 45, 64	Article 76-81, 89
2.	Safe custody services		
3.	Granting credits or loans to an investor to allow him to carry out a transaction in one or more of the relevant instruments where the firm granting the credit or loan is involved		

4.	Advice to undertakings on capital structure, industrial matters and advice and services relating to mergers and the purchase of undertakings	Article 14, 21, 25, 53, 64	Article 76-80, 83-85, 89
5.	Services related to underwriting	Article 25, 53, 64	Article 76-81, 83-85, 89
6.	Investment advice concerning one or more of the relevant instruments	Article 53, 64	Article 76-81, 83-85, 89
7.	Foreign exchange services where these are connected with the provision of investment services	Article 14, 21, 25, 53, 64	Article 83-85, 89

Note 1. The *ISD* activity of receiving and transmitting orders does not extend to the *regulated activity of making arrangements with a view to transactions in investments* under article 25(2) of the *Regulated Activities Order* unless the arrangements bring about or would bring about particular transactions. This is the case, whether or not the bringing about arises or would arise as a result of the *person* who makes the arrangements receiving and transmitting orders in relation to particular transactions or in any other way.

### 3.10 Mapping of Insurance Directives to the Regulated Activities Order

#### Introduction

3.10.1 G The *guidance* in *AUTH* 3.10 and Table 3 describes in broad outline the relationship between:

- (1) the insurance-related *regulated activities* specified in the *Regulated Activities Order*; and
- (2) the activities within the scope of the *Insurance Directives*.

3.10.2 G This is a guide only and should not be used as a substitute for legal advice in individual cases.

Table 3: Insurance Directive activities		Part II RAO Activities	Part III RAO Investments
<b>3. Non-life Insurance Directive activities</b>			
1.	Taking up and carrying on direct non-life insurance business	Article 10	Article 75
2.	Classes 1 to 18 of direct non-life insurance business in Point A of the Annex to the First Directive		Corresponding paragraphs 1 to 18 of Schedule 1, Part I

	<b>2. Consolidated Life Directive activities</b>		
1.	Taking up and carrying on direct life insurance business	Article 10	Article 75
2.	Classes I to IX of direct life insurance business in the Annex 1 to the Consolidated Life Directive		Corresponding paragraphs I to IX of Schedule 1, Part II
	It will normally be the case that the activities of taking up and carrying on direct non-life or life insurance business will also embrace the activity of accepting deposits	Article 5	Article 74

### Meaning of contract of insurance

3.10.3 G The meaning of *contract of insurance* is set out in article 3(1) of the *Regulated*

*Activities Order* (Interpretation). It does not include benefit-in-kind funeral plans, which are specified in article 60 of the *Regulated Activities Order* (plans covered by insurance or trust arrangements). Such funeral plans (to the extent that they are insurance) are also excluded from the *Insurance Directives*. It covers some contracts which might not otherwise be viewed as insurance in the *United Kingdom* (for example, contracts of guarantee). These contracts are also governed by the *Insurance Directives*. For the purpose of the *Regulated Activities Order*, a *contract of insurance* includes a contract of reinsurance as well as a contract of direct insurance.

### The Insurance Directives

3.10.4 G Article 1 of the *First Non-Life Directive* and article 2 of the *Consolidated Life Directive* provides that the Directives "concern the taking up and pursuit of the self-employed activity of direct insurance". By contrast, article 10 of the *Regulated Activities Order* (Effecting and carrying out contracts of insurance) also covers reinsurance.

3.10.5 G Articles 2, 3 and 4 of the *First Non-Life Directive* and *article 3 of the Consolidated Life Directive* set out certain exclusions by reference to:

- (1) types of insurance;
- (2) types of insurer;
- (3) particular conditions under which insurance activities are carried out;
- (4) annual income; and

(5) particular identified institutions.

- 3.10.6 G Some of the exclusions referred to in *SUP* App 3.11.2G mirror exclusions in the *Regulated Activities Order*. So, the exclusion for breakdown insurance in article 2(3) of the *First Non-Life Directive* is matched by a slightly narrower exclusion in article 12 of the *Regulated Activities Order* (Breakdown insurance). The separate treatment of benefit-in-kind funeral plans under the *Regulated Activities Order* (see *SUP* App 3.10.4G) is matched by their exclusion on a slightly wider basis in article 3(5) of the *Consolidated Life Directive*. Other requirements from these Directives are also excluded from regulation by the *Exemption Order*.
- 3.10.7 G Most of the exclusions under the Directives, however, are not excluded from being *regulated activities*. For example, article 3 of the *Consolidated Life Directive* and article 3 of the *Non-Life Directive* exclude certain mutual associations whose annual contribution income falls below a defined threshold. In the *United Kingdom*, these include certain smaller *friendly societies* commonly referred to as "*non-directive friendly societies*". The activities of such societies are regulated under the *Act*, on a "lighter basis" than the activities of other insurers.

#### **Territorial scope of the Regulated Activities Order and the Directives**

- 3.10.8 G Under the *Act* and the *Regulated Activities Order*, the activities of *effecting and carrying out contracts of insurance* are treated as being carried on in the *United Kingdom* on the basis of legal tests under which the location of the risk is only one factor. If the risk is located in the *United Kingdom*, then (other relevant factors being taken into account) the activity will, in the vast majority of cases, also be viewed as carried on in the *United Kingdom*. There are exceptions, however, and overseas insurers may insure risks in the *United Kingdom* without carrying on business here and so without requiring to be regulated (although the *financial promotion* regime may apply). By contrast, under the Directives, the responsibility, as between *EEA States*, for regulating the conduct of passported insurance services is determined by reference to the location of the risk or commitment, as defined in article 1 of the *Consolidated Life Directive* and article 2 of the *Second Non-Life Directive*.
- 3.10.9G So, the effect of *SUP* App 3.12.1G is that an *insurer* may be carrying on *insurance business* in the *United Kingdom* which is to be treated as a *regulated activity* under article 10 to the *Regulated Activities Order* (Effecting and carrying out contracts of insurance) in circumstances where the risks covered are treated as located in another *EEA State*. In that event, the *insurer* is required by Schedule 3 to the *Act* to passport into the State concerned and may be subject to conduct of business requirements in that State (see *SUP* 13.10 (Applicable provisions)).
- 3.10.10G An *insurer* authorised in another *EEA State* who is insuring *UK* risks and so passports on a services basis under the *Insurance Directives* into the *United Kingdom* (see *SUP* App 3.12.1 G), may not be carrying on a *regulated activity*

in the *United Kingdom*. But, if it passports into the *United Kingdom*, it will qualify for *authorisation* under paragraph 12 of Schedule 3 to the *Act* (Firms qualifying for authorisation). Where this is the case, the *insurer* will be subject to conduct of business requirements in the *United Kingdom* (see *AUTH 5.6* (Which rules will an incoming EEA firm be subject to?)).

#### **Activities carried on by incoming EEA firms in connection with insurance business.**

3.10.11G Although the *Insurance Directives* are concerned with the *regulated activities* of *effecting and carrying out contracts of insurance*, an *incoming EEA firm* passported under the *Consolidated Life Directive* will be entitled to carry on certain other *regulated activities* without the need for *top-up permission*. This is where the *regulated activities* are carried on for the purposes of or in connection with the *incoming EEA Firm's insurance business*. These *regulated activities* may include:

- (1) *dealing in investments as principal;*
- (2) *dealing in investments as agent;*
- (3) *arranging (bringing about) deals in investments;*
- (4) *making arrangements with a view to transactions in investments;*
- (5) *managing investments;*
- (6) *safeguarding and administering investments;*
- (7) *advising on investments;*
- (8) *agreeing to carry on a regulated activity* of the above kind.

#### **Financial promotion**

3.10.12G The *financial promotion* regime under section 21 of the *Act* (Restrictions on financial promotion) may also apply to *EEA insurance undertakings* regardless of whether they carry on a *regulated activity* in the *United Kingdom* or passport into the *United Kingdom*.

#### **Position of EEA reinsurers**

3.10.13G The *Insurance Directives* do not apply to reinsurance. But, the *Insurance Directives* do not prevent *insurance undertakings* authorised under those Directives from carrying out reinsurance as well as direct insurance business. Article 13(2) of the *First Non-Life Directive* and article 10(2) of the *Consolidated Life Directive* state that financial supervision of *insurance undertakings* "shall include verification, with respect to the insurance undertaking's entire business, of its state of solvency, of the establishment of technical provisions and of the assets covering them". On that basis, an



*insurance undertaking* authorised in another *EEA State* which carries on a mixed direct insurance and reinsurance business, and is, therefore, subject to the requirements of the Directives, will generally be treated as being subject to 'equivalent protection'. This is for the purpose of paragraph 3 of Schedule 4 to the *Act* (Exercise of treaty rights). The *insurance undertaking* will, therefore, generally be able to qualify for *permission* as a *Treaty firm* for its reinsurance business if it follows the procedure provided for by Schedule 4 (see *AUTH* 5.3.4G to *AUTH* 5.3.13G (Treaty Firms) and also *AUTH* 3.21 (Treaty firms applying for *Part IV Permission*)). This will be in addition to the *insurance undertaking* being an *EEA firm* under Schedule 3 of the *Act* for its direct insurance business.

## Annex B

### Amendments to the Glossary

Insert the following new definition in the appropriate alphabetical position:

<i>Consolidated Life Directive</i>	the Council Directive of 5 November 2002 on the taking-up and pursuit of the business of life assurance (No 2002/83/EC), which consolidates the provisions of the <i>First</i> , <i>Second</i> and <i>Third Life Directives</i> .
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**COMPLAINTS SOURCEBOOK (PIA OMBUDSMAN AWARDS)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers); and
  - (3) section 229 (Awards).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 June 2003.

**Amendments to the Complaints sourcebook**

- D. The Complaints sourcebook (DISP) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Complaints Sourcebook (PIA Ombudsman Awards) Instrument 2003.

By order of the Board  
15 May 2003

## Annex

### Amendments to the Complaints sourcebook (DISP)

In this Annex underlining indicates new text.

3.9.14R A *firm* must comply promptly with:

- (1) any money award or direction made by the *Ombudsman* or any award of money or other award made by an ombudsman appointed under the PIA Ombudsman scheme (including any interest payable by order of the PIA Ombudsman or the *Ombudsman*); and
- (2) any settlement which it agrees at an earlier stage of the procedures.

**UKLA FEES (2003/2004) AND RELATED LISTING RULES (AMENDMENT)  
INSTRUMENT 2003**

**Powers Exercised**

- A. The Financial Services Authority (the FSA), acting as the Competent Authority (the UK Listing Authority or UKLA) under sub-sections 72 (1) and (2) of Part VI of the Financial Services and Markets Act 2000 (the Act), hereby:
- (1) makes the fee schedule for the period 1 June 2003 to 31 May 2004 for the services specified in Schedule 13 in Annex A of this instrument; and
  - (2) amends the listing rules, the provisions of the guidance manual and the rules for the approval of non-listing prospectuses specified in the *Consequential Amendments to the Listing Rules* set out in Annexes B, C and D of this instrument.
- B. The FSA makes this instrument in the exercise of the following powers and related provisions in or under the Act:
- (1) section 74(4) (The official list);
  - (2) section 87 (Approval of prospectus where no application for listing);
  - (3) section 99(1) (Fees);
  - (4) section 101 (Listing rules: general provisions);
  - (5) section 157(1) (Guidance);
  - (6) paragraphs 1 (General), 4 (Rules) and 7 (Fees) of Schedule 7 (The Authority as Competent Authority for Part VI); and
  - (7) paragraph 7 of Schedule 9 (Non-listing Prospectuses).
- C. The provisions of the Act relevant to altering rules, and listed above, are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement and Operation**

- D. This instrument comes into force on 1 June 2003.
- E. The fees levied under the Fee Schedule are applicable for the period from 1 June 2003 to 31 May 2004.

**New Fee List**

- F. The Listing Rules are amended by inserting, as Schedule 13, the provisions in Annex A to this instrument.

**Amendment to the Listing Rules**

- G. The Listing Rules below are amended in accordance with Annex B to this instrument:
- (1) Chapter 1, rule 1.2;
  - (2) Chapter 2, rule 2.4 (b);
  - (3) Chapter 7, rules 7.7(a), 7.11 (c) and 7.12 (c);
  - (4) Chapter 17, rule 17.65;
  - (5) Chapter 23, rule 23.85;
  - (6) Chapter 24, rule 24.72.

**Amendment of the Rules for Approval of Prospectuses where no Application for Listing is Made**

- H. Paragraph 7(a) of the Rules for the approval of non-listing prospectuses as annexed to the Listing Rules, is amended in accordance with Annex C to this instrument.

**Amendment of UKLA Guidance Manual**

- I. Chapter 12 of the UKLA Guidance Manual, at paragraphs 12.3.2 and 12.5.3, is amended in accordance with Annex D to this instrument.

**Citation**

- J. This instrument may be cited as the UKLA Fees (2003/2004) and Related Listing Rules (Amendment) Instrument 2003.

By order of the Board  
15 May 2003

## ANNEX A

## SCHEDULE 13

## FEES

## Fees for the period 1 June 2003 to 31 May 2004

Fee type	Fee amount
----------	------------

**Annual fees**

Note: Annual fees are charged in annual cycles beginning on 1 April of a year and ending on 31 March of the following year)

Listing – All issuers of shares and certificates representing shares	<b>£3,950</b>
--	---------------

**Vetting fees**

Note: Transaction fees relate to specific events or transactions that an issuer might be involved in during the year and fall due when documentation is first submitted to the UKLA.

<b>Category 1</b> - listing particulars/prospectuses relating to the following transactions:	<b>£5,500</b>
--	---------------

- New applicants for share and debt listing which fall outside Chapter 23 of the Listing Rules
- New applicants for Certificates Representing Shares
- Asset-backed securities

<b>Category 2</b> – all other listing particulars/prospectuses, including:	<b>£2,500</b>
--	---------------

- Placing and open offers
- Rights issues
- Debt issues falling in Chapter 5 and Chapter 23 and where appropriate other chapters such as 18, 19 and 21
- Debt programmes falling in Chapter 23
- Securitised derivatives falling in Chapter 24

<b>Category 3</b> – “vet only” transactions (i.e. no application to list securities):	<b>£2,000</b>
---	---------------

- Class 1 transactions
- Related party transactions

<b>Category 4</b> – any other transaction which is vetted and which does not fall into any of the above categories, including:	<b>£500</b>
--	-------------

- Cancellation circulars
- Supplementary listing particulars (significant new matters)
- Supplementary listing particulars relating to the issue of a tranche of securities from a debt issuance programme (ie index or credit linked notes)

Note: If a single vetting transaction includes elements which fall into two or more of the above fee categories, only one fee is payable, being the highest fee of all the fees that would otherwise apply to that transaction.

**Application fees**

Note: Application fees become payable when an issuer makes an application for listing

Tranches from debt issuance programmes falling in Chapter 23 and securitised derivative tranches	<b>£100</b>
--	-------------

All other applications	<b>£200</b>
------------------------	-------------

**Sponsor fees**

Note: Annual fees are charged in annual cycles beginning on 1 April of a year and ending on 31 March of the following year). Application fees become payable when a person applies for approval as a sponsor.

Annual fee	<b>£5,000</b>
------------	---------------

Application fee	<b>£2,000</b>
-----------------	---------------

Note: VAT at 17.5% will be added to these fees where applicable.

## ANNEX B

(Underlining indicates new text and striking through indicates deleted text.)

### CHAPTER 1

#### COMPLIANCE WITH AND ENFORCEMENT OF THE LISTING RULES

##### Fees

- 1.2 Issuers must pay to the UK Listing Authority as they fall due fees for the time being in force as set out in Schedule 13 (as amended from time to time) required in relation to an application for listing and in relation to the continued inclusion of their securities in the official list.

### CHAPTER 2

#### SPONSORS

##### Sponsor

- 2.4 In order to be included on the list of sponsors maintained by the UK Listing Authority, a sponsor must:
- (a) be a person authorised for the purposes of the Act or a person regulated by a designated professional body under the Act;
  - (b) pay the relevant fees for the time being in force as set out in Schedule 13 (as amended from time to time) required by the UK Listing Authority
  - (c) be a body corporate or a partnership;
  - (d) have at least four eligible employees; and
  - (e) satisfy the UK Listing Authority that it is competent to perform the services required of a sponsor by the listing rules.

### CHAPTER 7

#### LISTING APPLICATION PROCEDURES

##### Items to be lodged on the day

- 7.7 The following items must be lodged with the UK Listing Authority (marked for the attention of Listing Applications) no later than 9.00am on the day of the consideration of the application for admission to listing:
- (a) payment of the appropriate listing fees calculated in accordance with the UK Listing Authority's scale of fees for the time being in force as set out in Schedule 13 (as amended from time to time);



## **Block listing and formal application**

### **Formal application**

- 7.11 In a formal application the following items must be lodged in final form with the UK Listing Authority (marked for the attention of Listing Applications) at least two business days prior to the consideration of each application for admission to listing (save as otherwise noted below):
- (c) payment of the appropriate listing fees calculated in accordance with the UK Listing Authority's scale of fees for the time being in force as set out in Schedule 13 (as amended from time to time);

### **Block listing application**

- 7.12 In a block listing application, the following items must be lodged in final form with the UK Listing Authority (marked for the attention of Listing Applications) at least two business days (save as otherwise noted below) prior to the consideration of the application for admission to listing in respect of a specified number of securities which are the subject of the application:
- (c) payment of the appropriate listing fees calculated in accordance with the UK Listing Authority's scale of fees for the time being in force as set out in Schedule 13 (as amended from time to time);

## **CHAPTER 17**

### **OVERSEAS COMPANIES**

## **Continuing obligations of overseas companies with a secondary listing by the UK Listing Authority**

### **Miscellaneous obligations**

#### **Annual listing fee**

- 17.65 An overseas company must pay the annual listing fee, calculated in accordance with the UK Listing Authority's scale of fees for the time being in force as set out in Schedule 13 (as amended from time to time), as soon as such payment becomes due.

## **CHAPTER 23**

### **SPECIALIST SECURITIES (INCLUDING EUROBONDS)**

## **Continuing obligations**

### **Miscellaneous obligations**

#### **Annual listing fee**

- 23.85 An issuer must pay the annual fee for listing, calculated in accordance with the UK Listing Authority's scale of fees for the time being in force as set out in Schedule 13 (as amended from time to time), as soon as such payment becomes due.

## CHAPTER 24

### SECURITISED DERIVATIVES

#### **Continuing obligations**

##### **Annual listing fee**

- 24.72 Issuers must pay the annual fee for listing, calculated in accordance with the UK Listing Authority's scale of fees for the time being in force as set out in Schedule 13 (as amended from time to time), as soon as such payment becomes due.

## ANNEX C

(Underlining indicates new text and striking through indicates deleted text.)

### **RULES FOR APPROVAL OF PROSPECTUSES WHERE NO APPLICATION FOR LISTING IS MADE**

#### **Submission and approval of prospectus.**

7. The following items must be lodged with the UK Listing Authority (marked for the attention of Listing Department) prior to or at the same time as submission of the first draft of the prospectus for approval:
  - (a) ~~payment of £5,000 being~~ the UK Listing Authority's fee in respect of a prospectus submitted for approval under these rules as set out in Schedule 13 (as amended from time to time);
  - (b) written confirmation from the issuer or the offeror to the UK Listing Authority that the conditions referred to in paragraph 1 are satisfied; and
  - (c) where the prospectus is submitted by an offeror, a letter to the UK Listing Authority from the issuer confirming that the issuer has consented to the prospectus being submitted to the UK Listing Authority for approval.

## ANNEX D

(Underlining indicates new text and striking through indicates deleted text.)

### Consequential amendments to the UKLA Guidance Manual

#### CHAPTER 12

##### 12. FEES

##### 12.3 Level and type of fees

12.3.2 Details regarding the level and type of fees charged by the *UKLA* are ~~published by the *UKLA* and are available on request~~ set out in Schedule 13 to the *listing rules* (as amended or replaced from time to time). They are also available from the *web-site*.

##### 12.5 Fees in relation to the continued inclusion of securities on the official list

12.5.3 Transaction fees relate to specific events or transactions that an issuer might be involved with during the year. These will include the issue of non-routine circulars, in respect of which the UKLA requires an issuer whose document requires approval to provide the appropriate fee at the ~~time of application for approval~~ that such document is first submitted.

**PERIODIC FEES (UNAUTHORISED MUTUAL SOCIETIES  
REGISTRATION) (2003/2004) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes the rules in this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) Section 156 (General supplementary powers); and
  - (2) Paragraph 17(1) of Schedule 1 (Fees).
- B. The provisions of the Act relevant to making rules and listed above are specified for the purpose of section 153(2) (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 June 2003.

**Amendment to Unauthorised Mutuals Registration Fees Rules**

- D. The Unauthorised Mutuals Registration Fees Rules are amended as set out in the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Periodic Fees (Unauthorised Mutual Societies Registration) (2003/2004) Instrument 2003.

By order of the Board  
15 May 2003

## Annex

### Amendments to the Unauthorised Mutuals Registration Fees Rules

In this annex, underlining indicates new text and striking through indicates deleted text.

#### Annex 1R

...

#### Periodic fee payable by Registered Societies (on 30 June 2003)

~~(This part will be made at a later date.)~~

(This fee is not payable by a *credit union*.)

<u>Transaction</u>	<u>Total Assets (£'000)</u>	<u>Amount Payable (£)</u>
<u>Periodic fee</u>	<u>0 to 50</u>	<u>60</u>
	<u>&gt; 50 to 100</u>	<u>100</u>
	<u>&gt; 100 to 250</u>	<u>150</u>
	<u>&gt;250 to 1,000</u>	<u>200</u>
	<u>&gt; 1,000</u>	<u>370</u>

...

#### Periodic fee payable by sponsoring bodies (on 30 June 2003)

~~(This part will be made at a later date.)~~

(This fee is not payable by sponsoring bodies in respect of the model rules of *credit unions*.)

<u>Transaction</u>	<u>Amount Payable (£)</u>
<u>Periodic Fee payable for each set of <i>model rules</i></u>	<u>150</u>

...

#### Methods of payment of periodic fees

~~(This part will be made at a later date.)~~

<u>Payment Method</u>	<u>Additional amount or discount applicable</u>
<u>Direct Debit</u>	<u>Discount of £20</u>
<u>Credit Transfer (BACS, CHAPS)</u>	<u>Discount of £10</u>
<u>Cheque</u>	<u>None</u>
<u>Switch</u>	<u>None</u>
<u>Credit card (Visa or Mastercard only)</u>	<u>Addition of 2% of sum paid</u>

**INTERIM PRUDENTIAL SOURCEBOOK FOR INVESTMENT BUSINESSES  
(AMENDMENT NO 4) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”).
- (1) section 138 (General rule-making power);
  - (2) section 149 (Evidential provisions); and
  - (3) section 156 (General supplementary powers).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 July 2003.

**Amendments to the Interim Prudential sourcebook for investment businesses**

- D. IPRU(INV) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Interim Prudential Sourcebook for Investment Businesses (Amendment No 4) Instrument 2003.

By order of the Board  
19 June 2003

## Annex

### Amendments to IPRU(INV)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### **Chapter 13: Financial Resources Requirements for Personal Investment Firms**

**(In IPRU (INV), this text is at page 2 of 71)**

13.1.5 E ...

- (2) The professional indemnity insurance *policy* should incorporate terms which make provision for the following:

...

- (j) the excess is not to exceed the greater of £5,000 or 3% of relevant income;

(jA) a single excess is to apply in respect of one or more claims brought against the *firm* by one or more claimants arising from:

(i) a single act or omission;

(ii) a series of acts or omissions, if the series is as a result of:

(A) a course of dishonest conduct, or

(B) an event causing loss of, or damage to, documents.

#### **APPENDIX 13 (2)E PROFESSIONAL INDEMNITY INSURANCE PROVISIONS**

**(page 1 of 16)**

E The policy terms and additional clauses set out below form part of rule 13.1.65E and have the status of evidential provisions.

...

#### **SECTION 3 – CLAIMS CONDITIONS**

3.2 (a) If during the Period of this Policy the Assured shall receive any claim, the Assured shall give notice (~~see 3.3~~) to Underwriters as soon as practicable, but in any event not later than expiry of the Period of this Policy.



- (b) If during the Period of this Policy the Assured becomes aware of any Circumstance which may give rise to a claim, the Assured shall give notice (~~see 3.3~~) to Underwriters of such Circumstance as soon as practicable, but in any event not later than expiry of the Period of this Policy.

Underwriters agree that any such Circumstance notified to them during the Period of this Policy and which subsequently gives rise to a claim after expiry of this policy shall be deemed to be a claim first made during the Period of this Policy.

### Notice

~~3.3 Notwithstanding Clause 3.2 if the Assured becomes aware of a claim or discovers any Circumstance and is unable, due to any reasonable cause, to give notice during the Period of this Policy, Underwriters will accept such notice up to 15 days after expiry of this policy, provided always that the matter which is being notified first came to the Assured's attention during the Period of this Policy.~~

...

### SECTION 5 - EXCLUSIONS

5.1 This policy shall not indemnify the Assured in respect of the following:

- (a) Excess

~~The amount of the Excess shown in the Schedule or in any extension as appropriate.~~

~~Defence costs referred to in Clause 1.2 shall not be the subject of any excess.~~

i) In respect of clause 1.1 "Insuring Clause" and/or clause 1.2 "Defence Costs In Addition", the amount of the Excess shown in the Schedule or in any extension as appropriate.

ii) In the event that Underwriters decline the Assured's claim for indemnity under clause 1.1 "Insuring Clause", Underwriters shall have no right under this clause to recover from the Assured the amount of the Excess in respect of any Defence Costs paid by Underwriters.

...

- (h) War Risks and Terrorism Exclusion

In respect of extension 2.1 only, any consequence of Any claim arising directly or indirectly out of :

- (i) war, ~~including a terrorist act initiated by hostile parties,~~ invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion or military or usurped power; or
- (ii) an act of terrorism.

...

(n) Computer Network and Data Corruption

Any claim arising directly or indirectly out of:

1. corruption, erasure, theft, alteration of; or
2. access or lack of access to; or
3. interference with;

electronically held data of the Assured wholly or partly caused by any computer virus or by any person who is not a partner, director or employee of the Assured. In this clause “employee” includes self-employed or contract hire persons used in connection with the Assured’s Professional Business.

...

6.7 Excess

Shall mean the first amount of each claim by the Assured for an indemnity (including associated Defence Costs), which is payable by the Assured because of clause 5.1 (a), and where the claim for indemnity comprises one or more claims brought against the Assured by one or more claimants but arises from a single act or omission by the Assured. Where, however, a series of claims for indemnity is made by the Assured during the Period of this Policy which arises from the same original cause a course of dishonest conduct or from loss of or damage to documents then only one single excess shall apply in respect of all claims resulting from that original cause-series of claims.

...

Additional Clauses

**1 COMPLIANCE CLAUSE**

This Policy is designed to provide the minimum insurance requirements in accordance with the rules of the Financial Services Authority ('FSA') as they apply to the firm. However, for the avoidance of doubt in any dispute in connection with the terms, conditions, exclusions and limitations of this Policy it is specifically understood and agreed that the minimum insurance requirements as set out in the FSA rules at the date of inception or renewal of the policy shall take precedence over any terms, conditions, exclusions or limitations contained herein which are less favourable to the Insured.

...

Delete clause 3 (IBRC Compliance Clause) and clause 4 (Year 2000 Exclusion)

3 [deleted]

4 [deleted]

**CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT NO 12)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the powers listed in Schedule 4 to the Conduct of Business sourcebook.
- B. The rule-making powers listed in that Schedule are specified for the purpose of section 153(2) of the Financial Services and Markets Act 2000 (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 January 2004.

**Amendments to the Conduct of Business sourcebook**

- D. The Conduct of Business sourcebook is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Conduct of Business Sourcebook (Amendment No 12) Instrument 2003.

By order of the Board  
19 June 2003

## Annex

### Amendments to the Conduct of Business sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

6.7.3 G ...

- (8) *COB 6.7.23 R* and *COB 6.7.26A R* specifies certain variations to existing agreements which *customers* have a right to cancel or right to withdraw from.

...

#### Right to cancel

6.7.7 R *A customer, who is an individual, has a right to cancel:*

...

- (4) *a variation of a life policy, a pension contract or stakeholder pension scheme for which a right to cancel applies under COB 6.7.23 R and COB 6.7.26A R.*

...

#### Right to withdraw

6.7.14 R *A customer, who is an individual, has a right to withdraw an offer to enter into:*

...

- (2) *a pension annuity or a pension transfer (or a relevant variation), if a right to cancel has been replaced by a right to withdraw under case 4(a) or 7(a) of column 2, COB 6.7.15 R, case 12 of column 2, COB 6.7.17 R, ~~or COB 6.7.23 R(3)~~, or COB 6.7.26A R(2); the right to withdraw procedures are set out in COB 6.7.19 R.*

...

**6.7.26A R (1)** **If a *customer* who is an individual varies an existing *pension scheme* by exercising an option to make *income withdrawals*, he has a right to cancel that first variation, unless the right to cancel is replaced by the right to withdraw under (2).**

**(2)** **The *customer's* right to cancel under (1) is replaced by the right to withdraw if the *firm* follows the procedures in COB 6.7.19 R.**

**WITH-PROFITS GOVERNANCE INSTRUMENT 2003****Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions of the Financial Services and Markets Act 2000 (the 'Act'):
- (1) section 59 (Approval);
  - (2) section 138 (General rule-making power);
  - (3) section 156 (General supplementary powers); and
  - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 31 March 2004.

**Amendments to the Conduct of Business sourcebook**

- D. The Conduct of Business sourcebook is amended by inserting, as COB 6.10 and COB 6.11, the provisions in Annexes A and B to this instrument.

**Amendments to the Supervision manual**

- E. The Supervision manual is amended in accordance with Annex C to this instrument

**Amendments to the Glossary**

- F. The Glossary is amended in accordance with Annex D to this instrument.

**Citation**

- G. This instrument may be cited as the With-Profits Governance Instrument 2003.

By order of the Board  
19 June 2003

**Annex A**  
**Amendments to the Conduct of Business sourcebook**

After *COB* 6.9, insert the following new section:

**6.10 Principles and Practices of Financial Management (PPFM)**

**Application and purpose**

**Application**

**6.10.1 R (1) This chapter applies to a *firm* carrying on *with-profits business* other than:**

**(a) a *non-directive friendly society*; or**

**(b) an *EEA insurer*.**

**(2) This chapter does not apply to *with-profits business* that consists of effecting or carrying out *Holloway sickness policies*.**

**Purpose**

6.10.2 G *Principle 6* (Customers' interests) requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly.

6.10.3 G The *rules* and *guidance* in this section are intended to secure an appropriate degree of protection for *policyholders* and potential *policyholders* of *firms* carrying on *with-profits business* by requiring them to define and make available their *Principles and Practices of Financial Management*. These *rules* and *guidance* are also intended to enable *policyholders* and potential *policyholders* of *firms* carrying on *with-profits business* better to understand the way in which *firms* carry on their *with-profits business*.

6.10.4 G A *firm's Principles and Practices of Financial Management* also play an important role in promoting confidence among *with-profits policyholders* and in the governance arrangements for *with-profits business* set out in *COB* 6.11 (Reporting to *with-profits policyholders* on compliance with PPFM).

**Principles and Practices of Financial Management**

**6.10.5 R (1) A *firm* must establish and maintain the *Principles and Practices of Financial Management* according to which the business of its *with-profits funds* is conducted.**



**(2) A firm must make a record of its *Principles and Practices of Financial Management* in (1), and retain that record for six years from the date on which it was superseded by a more up-to-date record.**

- 6.10.6 G Whether a separate *PPFM* is needed for each *with-profits fund* is a matter for the *firm* in the light of its circumstances, including previous management of those funds and any relevant representations made by the *firm* to *with-profits policyholders*.
- 6.10.7 G In order to comply with *COB* 6.10.5R a *firm* should:
- (1) establish and maintain a document approved by its *governing body*, setting out its *PPFM*; and
  - (2) keep a record of each version of the *PPFM* as it changes over time.

#### **Obligation to provide copies**

- 6.10.8 R **A firm must provide a copy of its *PPFM*, or the *PPFM* applicable to specified *with-profits funds*:**
- (1) free of charge at the request of any *with-profits policyholder* of the *firm*; and**
  - (2) at the request of any *person* who is not a *with-profits policyholder* of the *firm* if that *person* pays any reasonable charge the *firm* may make for providing that copy.**
- 6.10.9 G A *firm* should indicate in any annual statements sent to *with-profits policyholders* that copies of the *firm's PPFM*, or the *PPFM* applicable to specified *with-profits funds*, are available on request, under *COB* 6.10.8R. The *PPFM* might also be published on a *firm's* website.

#### **Principles of Financial Management**

- 6.10.10 R **The *with-profits principles* within the *PPFM* must:**
- (1) be enduring statements of the overarching standards the *firm* adopts in managing *with-profits funds*; and**
  - (2) describe the business model used by the *firm* in meeting its duties to *with-profits policyholders* and in responding to longer-term changes in the business and economic environment.**
- 6.10.11 G The *with-profits principles* are not expected to change often. However, they should be informative enough to enable the *directors*, any *actuary* appointed under *SUP* 4 (Actuaries) and any *With-profits Committee*, amongst others, to judge whether existing or potential *with-profits practices* are appropriate for the *firm*.

- 6.10.12 R A *firm* must send its *with-profits policyholders* written notice, setting out any proposed changes to the *with-profits principles* of the *firm*, three *months* in advance of the effective date of the proposed changes.
- 6.10.13 R If a *firm* maintains more than one *PPFM*, the notice in *COB 6.10.12R* need only be sent to those *policyholders* affected by the *PPFM* being changed.
- 6.10.14 G A *firm* may give the notice required under *COB 6.10.12R* by including the required information in any annual statements sent to *with-profits policyholders* if this is at least three *months* in advance of the effective date of the proposed changes.
- 6.10.15 G Changes to the *with-profits principles* of a *firm* are likely to trigger one or more of the *firm's* obligations to notify the *FSA* under *SUP 15.3* (General notification requirements).

### Practices of Financial Management

- 6.10.16 R The *with-profits practices* within the *PPFM* must:
- (1) describe the *firm's* approach to managing *with-profits funds* and to responding to changes in the business and economic environment in the shorter-term; and
  - (2) contain sufficient detail to enable a knowledgeable observer to understand the material risks and rewards from effecting or maintaining a *with-profits policy* with the *firm*.
- 6.10.17 G Subject to the *with-profits principles*, a *firm's with-profits practices* are expected to change as the *firm's* circumstances and the business environment change, with some alteration, for example, every few years.
- 6.10.18 R A *firm* must send its *with-profits policyholders* written notice, setting out any changes to the *with-profits practices* of the *firm*.
- 6.10.19 R If a *firm* maintains more than one *PPFM*, the notice in *COB 6.10.18R* need only be sent to those *policyholders* affected by the *PPFM* being changed.
- 6.10.20 G A *firm* may give the notice required under *COB 6.10.18R* by including the required information in any annual statements sent to *with-profits policyholders*. The notice can be in arrears but should be within a reasonable time period from the effective date of the change.
- 6.10.21 G Changes to the *with-profits practices* of a *firm* may trigger one or more of the *firm's* obligations to notify the *FSA* under *SUP 15.3* (General notification requirements).

### Scope and content of the Principles and Practices of Financial Management

- 6.10.22 R (1) The *PPFM* of a *firm* must cover any issue that has, or it is reasonably foreseeable may have, a significant impact on the *firm's* management of *with-profits funds*.

**(2) The issues in (1) include: the amount payable under a *with-profits policy*, the investment strategy, business risk, charges and expenses, management of the *inherited estate*, volumes of new business and arrangements on stopping taking new business, and equity between the *with-profits fund* and any shareholders.**

- 6.10.23 G In addition to the issues in *COB 6.10.22R(2)*, a *firm's PPFM* should also cover any other areas that are important to the management of its *with-profits funds* and that may affect the amounts payable under *with-profits policies*.
- 6.10.24 G A *firm's PPFM* should reflect any requirements or constraints relevant to the management of *with-profits funds* that apply to the *firm* as a result of previous dealings: for example, previous business transfer schemes. The *PPFM* should also set out the extent to which the *firm's* freedom to alter its *PPFM* is constrained, including by such previous dealings.
- 6.10.25 G The rest of this section includes *rules* on each of the issues that a *firm's PPFM* must cover, followed in each case by *guidance* on how various information relevant to that issue might be split between *with-profits principles* and *with-profits practices*.

#### **The amount payable under a with-profits policy**

- 6.10.26 R The *PPFM* of a *firm* must cover the methods that the *firm* uses to guide its determination of the amount that it is appropriate to pay individual *with-profits policyholders*, including:**
- (1) the aims of the methods used, and the approximations used;**
  - (2) how the current methods, including any relevant historical assumptions used and any systems maintained to deliver results of particular methods, are documented within the *firm*; and**
  - (3) the procedures for changing either the current method or any assumptions or parameters relevant to a particular method.**
- 6.10.27 G A *firm* may use a number of methods to determine the amount payable to a *with-profits policyholder* and may use more than one method to determine the amount payable to a particular *with-profits policyholder*.
- 6.10.28 G The *firm's with-profits principles* should describe:
- (1) the aims of the methods the *firm* uses to determine the amount payable to *with-profits policyholders*;
  - (2) the degree of approximation that the *firm* is prepared to allow in the application of those methods and in the application of its *with-profits principles*;
  - (3) how the *firm* controls changes to those methods; and

- (4) the circumstances under which the *firm* might change any historical assumptions or parameters relevant to those methods: for example, previously applied investment returns, charges, or allocations of miscellaneous surplus, that have been derived from the historical experience and actions of the *firm*.
- 6.10.29 G The *firm's with-profits practices* should describe, for each major class of *with-profits policy*:
- (1) the methods that the *firm* currently uses to determine the amount payable to *with-profits policyholders*;
  - (2) the methods that the *firm* currently uses to determine the main assumptions or parameters that determine the output of those methods;
  - (3) the degree of approximation that the *firm* allows when it applies assumptions or parameters across generations of *with-profits policyholders* or across different types or classes of *with-profits policies*;
  - (4) the formality with which the *firm* documents the methods, parameters or assumptions that it uses to determine the amount payable to *with-profits policyholders*; and
  - (5) the *firm's* internal procedures for changing either the current methods or the current parameters or assumptions relevant to a particular method.
- 6.10.30 G The *firm's with-profits practices* should describe how the *firm* brings investment return, expenses or charges and tax into account and how the *firm* determines the impact of those items on the amount payable under a *with-profits policy*. In particular, the *firm's with-profits practices* should describe:
- (1) any distinctions that the *firm* makes in recognising the investment return from a subset of the total assets of a *with-profits fund*;
  - (2) whether the *firm* apportions expenses fully between all the policies in a *with-profits fund* or apportions expenses in some other way, for example, by meeting some expenses from the *firm's inherited estate*;
  - (3) the relationship between the actual liability to tax of a *with-profits fund* and the tax that the *firm* imputes to determine the amount payable under a *with-profits policy*;
  - (4) the impact on the amount payable under a *with-profits policy* of any liability to tax of a *with-profits fund* as a result of the *firm* making a transfer to shareholders; and
  - (5) how the *firm* brings any other items into account, including, for example, charges made for the costs of guarantees, charges for the use of capital and charges for other risks.

- 6.10.31 R The PPFM of a firm must cover the firm's approach to setting annual bonus rates applicable to with-profits policies.**
- 6.10.32 G The firm's with-profits principles should:
- (1) describe the firm's general aims in setting annual bonus rates and the constraints to which the firm may be subject in changing economic circumstances; and
  - (2) indicate how the firm would determine the range of with-profits policies or generations of with-profits policies over which the firm believes a single bonus rate would be appropriate and the circumstances under which the firm believes a new bonus series would be necessary.
- 6.10.33 G The firm's with-profits practices should:
- (1) describe the firm's current approach to setting annual bonus rates, including the weight given to recent economic experience;
  - (2) indicate the frequency at which the firm re-sets or expects to re-set annual bonus rates;
  - (3) indicate the maximum amount (if any) by which annual bonuses would alter if the firm were to re-set annual bonus rates; and
  - (4) describe the firm's approach to setting any interim bonus rates before the next declaration of annual bonus rates.
- 6.10.34 R The PPFM of a firm must cover the firm's approach to setting final bonus rates applicable to with-profits policies.**
- 6.10.35 G The firm's with-profits principles should describe the firm's approach to setting final bonus rates, in the context of the firm's general aims in determining the total amount payable under with-profits policies, and by reference to the constraints to which the firm may be subject in changing economic circumstances.
- 6.10.36 G The firm's with-profits practices should:
- (1) describe the firm's current approach to setting final bonus rates, including the weight given to recent economic experience. The description should include any distinctions that the firm makes between with-profits policies that remain in force until contractual dates, or dates on which no market value reduction applies (for example, maturity or retirement dates) and policies that are surrendered or transferred at other dates;
  - (2) describe the relationship or interaction between final bonus rates and any market value reductions, if both can apply at the same time;
  - (3) describe how final bonuses influence the value of with-profits policies that have formulaic surrender or transfer bases (for example, older conventional policies rather than unitised policies); and

- (4) indicate the frequency at which the *firm* sets or expects to set final bonus rates and the circumstances under which changes in the economic environment would cause the *firm* to change the time between re-setting.
- 6.10.37 R The PPFM must cover the *firm*'s approach to smoothing the value of *with-profits* policies.**
- 6.10.38 G The *firm*'s *with-profits* principles should:
- (1) indicate whether and in what respect the *firm* takes a significantly different approach to smoothing depending on the type of claim arising from *with-profits* policies;
  - (2) indicate whether the *firm* intends smoothing to be neutral over time;
  - (3) indicate whether there is any total scale or cost of smoothing to the *firm* over the shorter-term that the *firm* believes should not be exceeded. The *FSA* takes the cost of smoothing to mean the extent to which the amount actually payable under a *with-profits* policy diverges from the theoretical determinant of policy value under *COB* 6.10.26R, except where due to applicable guarantees; and
  - (4) indicate whether the *firm* applies market value reductions, or changes the surrender bases for *with-profits* policies that are not unitised, only to reflect changes in underlying asset values.
- 6.10.39 G The *firm*'s *with-profits* practices should:
- (1) indicate how rapidly the *firm* might need to adjust the value of *with-profits* policies, by specifying any period over which the *firm* expects smoothing to be neutral;
  - (2) indicate whether there is any overall limit to the accumulated cost of, or excess from, smoothing that the *firm* is prepared to tolerate;
  - (3) indicate whether the *firm* applies a single smoothing strategy to all generations and types of *with-profits* policy, or applies different smoothing strategies to subsets of the *with-profits* fund, in particular whether (and in what respect) the *firm* applies a different smoothing strategy to new entrants to a *with-profits* fund when the accumulated cost or excess from smoothing is large;
  - (4) describe the *firm*'s current approach to smoothing: for example, the acceptable degree of change in the value of similar *with-profits* policies from one year to the next, or the formula the *firm* uses to recognise recent investment performance as a determinant of the value of a *with-profits* policy;
  - (5) describe how the *firm* applies smoothing to classes of *with-profits* policies that participate in final bonuses indirectly: for example, older policies with formulaic surrender or transfer bases;

- (6) describe how accurately the *firm* applies market value reductions or surrender and transfer bases to give effect to smoothing; and
- (7) describe how the *firm* accounts for partial payments under *with-profits policies* to which no penalty (for example, by market value reductions) is applied, in determining the eventual total value of a *with-profits policy*.

### Investment strategy

**6.10.40 R** The *PPFM* of a *firm* must cover the significant aspects of the *firm's* investment strategy for its *with-profits business* or, if different, any *with-profits fund*, including:

- (1)** the degree of matching to be maintained between assets relevant to *with-profits business* and liabilities to *with-profits policyholders* and other creditors;
- (2)** the *firm's* approach to assets of different credit or liquidity quality and different volatility of market values;
- (3)** the presence among the assets relevant to *with-profits business* of any assets that would not normally be traded because of their importance to the *firm*, and the justification for holding such assets; and
- (4)** the *firm's* controls on using new asset or liability instruments and the nature of any approval required before new instruments are used.

6.10.41 G The *firm's with-profits principles* should:

- (1) set out the *firm's* investment strategy in terms that allow alternative *with-profits practices* to be judged and where necessary rejected. The *firm's with-profits principles* should therefore specify the specific factors that drive the *firm's* investment strategy, in more detail than, for example, simply achieving the best return within the framework of the likely volatility of asset values;
- (2) if the *firm* relies on assets outside a *with-profits fund* to maintain the *firm's* investment strategy, state on which assets and to what degree the *firm* relies;
- (3) set out how the *firm* views the use, as part of its investment strategy, of *derivatives* and other instruments that may alter the economic out-turn from assets;
- (4) set out any constraints on the *firm's* investment strategy either with respect to parts of a *with-profits fund* (for example, classes of *with-profits policy* or bonus series) or between different generations of *with-profits policyholders*; and

- (5) set out any overarching constraints on the *firm's* exposure to any one counterparty including *derivative* exposures.
- 6.10.42 G The *firm's with-profits practices* should:
- (1) describe what procedures the *firm* follows to transfer assets to the *with-profits fund* under COB 6.10.41G(2) and at what point such transfers would be recognised as irretrievable by the provider of outside assets;
  - (2) set out the period between formal reviews of the *firm's* investment strategy;
  - (3) describe the degree of matching the *firm* maintains between the assets of a *with-profits fund* and liabilities to *with-profits policyholders* and other creditors, and the basis of the liabilities assessed for such purposes;
  - (4) explain the *firm's* approach to investment in different asset classes, and assets of different credit or liquidity quality. This may include, for example, the *firm's* guidelines as to the overall limit on the amount of a *with-profits fund* that may be invested in particular asset classes and the overall credit rating of parts of the portfolio, the minimum credit quality of new and existing investments as well as the overall liquidity constraints on the *with-profits fund*; and
  - (5) explain the approval process that the *firm* operates before investing in new or novel *investment* instruments.
- 6.10.43 G A *with-profits fund* may include assets that would not normally be traded because of their importance to the *firm*. These might be physical assets: for example, the *firm's* head office building, but may include contingent support or guarantee arrangements to or from other entities.
- 6.10.44 G In relation to assets that would not normally be traded because of their importance to the *firm*, the *with-profits principles* of the *firm* should:
- (1) describe why such assets are of use to a *with-profits fund*;
  - (2) describe what reviews the *firm* carries out to ensure those assets still remain of use;
  - (3) set out any limits that the *firm* imposes on the scale of investment in those assets;
  - (4) indicate whether the out-turn from investment in those assets will impact on the amounts payable under *with-profits policies*; and
  - (5) indicate what credit or liquidity requirements the *firm* applies to *investments* in those assets.



6.10.45 In relation to assets that would not normally be traded, the *with-profits practices* of the *firm* should describe those assets, their current application in determining claim values and any constraints imposed on the *firm's* investment freedom as a result of its investment in those assets.

### **Business risk**

**6.10.46 R** The *PPFM* of a *firm* must cover the exposure of the *firm's with-profits business* to business risk, including the *firm's*:

- (1) procedures for deciding if the *with-profits business* may undertake a particular business risk;
- (2) arrangements for reviewing and setting a limit on the scale of such risks; and
- (3) procedures for reflecting the profits or losses of such business risks in the amounts payable under *with-profits policies*.

6.10.47 G Business risk for a *with-profits fund* can include a number of exposures, for example:

- (1) exposure to maintaining and acquiring *with-profits policies*;
- (2) exposure to maintaining and acquiring non-profit policies;
- (3) exposure to risks from other *investments*: for example, in investment management companies, service companies or overseas subsidiary insurance companies.

6.10.48 G The *PPFM* of a *firm* should make clear how the *firm* considers such exposures before they are taken up or entered into, and how the *firm* intends to deal with rewards or risks going forward. In particular, the *PPFM* should make clear what alternatives the *firm* sets as a benchmark when reviewing existing business risk and new business risks to determine whether the rewards are reasonable given the risks undertaken.

6.10.49 G Where the *firm* explicitly excludes business risk from a class of *with-profits policies* there may often be residual risks from the class that are natural to *with-profits policies* such as guarantee and smoothing costs. The *PPFM* should make clear where such costs are borne.

6.10.50 G The *firm's with-profits principles* should set out the general limits that the *firm* applies to the taking on of business risk and the control that the *firm* exercises over existing business risk. In particular, the *with-profits principles* should define where compensation costs from a business risk would be borne.

6.10.51 G The *firm's with-profits practices* should:

- (1) describe the current limits that the *firm* applies to the taking on of business risk;

- (2) describe the *firm's* approach to the application of the rewards and losses from business risks as a determinant of the amount payable under a *with-profits policy*;
- (3) describe the degree to which the *firm* smoothes any profits or losses from business risks before applying them to determine the amount payable under a *with-profits policy*;
- (4) indicate whether profits or losses from business risks must exceed a minimum value or scale before the *firm* will treat them as a determinant of the amount payable under a *with-profits policy*; and
- (5) indicate whether and to what extent particular generations of *with-profits policyholders* or classes of *with-profits policy* bear or might bear particular business risks, including, for example, crystallised or contingent guarantees to other classes of *policyholder* or whether the out-turn from all business risk is pooled across all *with-profits policies*.

### Charges and expenses

- 6.10.52 **R** **The *PPFM* must cover the way in which the *firm* applies charges and apportions expenses to its *with-profits business*, including, if material, any interaction with *connected firms*.**
- 6.10.53 G The *firm's with-profits principles* should:
- (1) describe the overall aim of the *firm's* approach to applying charges and apportioning expenses to *with-profits policies*, covering all types of charges and expenses including investment costs, commissions and charges borne from investment through *collective investment schemes*; and
  - (2) set out the factors that would drive any change to the basis on which the *firm* applies charges to or apportions its actual expenses amongst *with-profits policies*, or exercises any discretion to apply charges to particular *with-profits policies*.
- 6.10.54 G The *firm's with-profits practices* should:
- (1) give a general description of the charges that the *firm* currently applies and the expenses that it currently apportions to major classes of *with-profits policies*;
  - (2) describe the relationship between the *firm's* actual charges and expenses, as applied to determine the amounts payable under *with-profits policies*, and the charges and expenses borne by the *with-profits fund*;
  - (3) state the circumstances under which the *firm* will charge expenses to the *with-profits fund* at an amount other than cost, and the reasons why the *firm* will do so; and

- (4) state the interval at which the *firm* will review any arrangements under which it obtains out-sourced services, including those provided by connected parties, and give a broad indication of the terms on which the *firm* would be able to terminate the agreements to provide those services.
- 6.10.55 G The *PPFM* of a *firm* should make clear the criteria that the *firm* will apply when it has to make judgements about how to apply charges and apportion expenses between *with-profits funds* or between a *with-profits fund* and *shareholder* owned funds, *firms* or *service companies*.

### Management of the inherited estate

- 6.10.56 R The *PPFM* of a *firm* must cover the *firm's* management of any *inherited estate* and the uses to which the *firm* may put that *inherited estate*.
- 6.10.57 G The *firm's with-profits principles* should:
- (1) describe how the *firm* will manage its *inherited estate*;
  - (2) describe the purposes for which the *firm* will apply the *inherited estate*;
  - (3) indicate the size or scale of *inherited estate* for which the *firm* is aiming, for example, by reference to the volume of the *firm's* existing business or the risks borne by the *firm's* existing business;
  - (4) explain the implications of the *firm's* preferred size or scale of *inherited estate* for the value of the *firm's with-profits policies*;
  - (5) describe any existing division of the *firm's inherited estate* between *with-profits funds* within the *firm*; and
  - (6) describe any constraints on the *firm's* freedom to deal with the *inherited estate* as a result of previous dealings: for example, a transfer of business scheme or attribution or re-attribution of a previous *inherited estate*.
- 6.10.58 G The *firm's with-profits practices* should:
- (1) describe how the *firm* uses the *inherited estate* by, for example, reference to the costs the *inherited estate* is meeting;
  - (2) state whether the *firm's* investment strategy for the *inherited estate* is different to the *firm's* investment strategy for the rest of the *with-profits fund*; and
  - (3) describe any current guidelines that the *firm* has in place as to the size or scale of the *inherited estate* or as to how the *firm* would manage the *inherited estate* and over what time period, if it became too large or too small.

### Volumes of new business and arrangements on stopping taking new business

**6.10.59 R The PPFM of a firm whose with-profit fund is accepting new business must cover the firm's practice for review of the limits on the quantity and type of new with-profits business and the actions that the firm would take if it ceased to take on new with-profits business of any significant amount.**

6.10.60 G The firm's with-profits principles should:

- (1) set out the firm's approach to setting the volume of new business, both new with-profits business and non-profit business written in the with-profits fund; and
- (2) set out the firm's anticipated reaction to closure to significant amounts of new business and, in particular, what action it would take in that event as regards the distribution of any inherited estate.

6.10.61 G The firm's with-profits practices should:

- (1) describe the approach the firm takes to setting any maximum volume of new business each year and any particular limits on classes of business, including non-profit business within the with-profits fund; and
- (2) describe what the firm considers should be the minimum proportion and scale of new business of a with-profits type to justify the with-profits fund staying open to new business.

#### **Equity between the with-profits fund and any shareholders**

**6.10.62 R The PPFM of a firm must cover the firm's approach to achieving a balance between the interests of with-profits policyholders and the interests of any shareholders of the firm.**

6.10.63 G The firm's with-profits principles should:

- (1) describe the firm's arrangements for profit sharing between shareholders and with-profits policyholders and the scope for changes in the share of profits allotted to each; and
- (2) indicate the approach that the firm will take before any changes to the profit sharing arrangements are implemented.

6.10.64 G The firm's with-profits practices should:

- (1) indicate the current basis on which the firm divides profit between with-profits policyholders and shareholders, including the method of calculating the profit to be divided;
- (2) indicate whether the division of profit between with-profits policyholders and shareholders would change if there was a change in the underlying basis on which the shareholder share is computed (normally the valuation basis of the mathematical reserves);

- (3) indicate other factors that would have a significant impact on the balance between the *shareholder* share and the *with-profits fund*, for example:
  - (a) tax or other imposts; or
  - (b) distributions in anticipation of a surplus; or
  - (c) the *firm's* approach to *with-profits policies* with both an entitlement to final bonus and an exposure to a market value reduction; or
  - (d) the impact of guaranteed bonuses; and
- (4) state whether the pricing of any policies that the *firm* is writing, and particular policies open to new business, appear to be significantly and systematically reducing the *firm's inherited estate* if the *shareholder* transfer is taken into account.

**Annex B**  
**Amendments to the Conduct of Business sourcebook**

After *COB* 6.10, insert the following new section:

**6.11 Reporting to with-profits policyholders on compliance with PPFM**

**Application and purpose**

**Application**

**6.11.1 R** This chapter applies to a *firm* carrying on *with-profits business* other than:

- (1) a *non-directive friendly society*; or
- (2) an *EEA insurer*.

**6.11.2 R** This section does not apply to *with-profits business* that consists of effecting or carrying out *Holloway sickness policies*.

**Purpose**

6.11.3 G The *rules* and *guidance* in this section are intended to secure an appropriate degree of protection for *with-profits policyholders* and potential *with-profits policyholders* and to promote confidence among such *policyholders* by:

- (1) giving *guidance* on governance arrangements relevant to the way in which *with-profits firms* comply with *SYSC* in the conduct of *with-profits business*; and
- (2) requiring *firms* to make an annual report available to *with-profits policyholders*.

**Governance arrangements for with-profits business**

6.11.4 G In complying with *SYSC* 3.2.6R, a *firm* should maintain governance arrangements designed to ensure that in the conduct of *with-profits business* it complies with, maintains and records any applicable *PPFM*.

6.11.5 G The governance arrangements referred to in *COB* 6.11.4G should:

- (1) be appropriate to the scale and complexity of a *firm's with-profits business*; and
- (2) involve some independent judgement in the assessment of compliance with *PPFM* and how any competing or conflicting rights and interests of *policyholders* and, if applicable, *shareholders* have been addressed.

- 6.11.6 G The independent judgement in *COB 6.11.5G(2)* can be provided in different ways. These may include but are not confined to:
- (1) establishing a committee of the *governing body* (a With-profits Committee), including non-executive members of the *governing body* and possibly some external non-directors with appropriate skills and experience;
  - (2) asking an independent person with appropriate skills and experience to report on these matters to the *governing body* or to any With-profits Committee; or
  - (3) for small *firms* in particular, asking a non-executive member (or members) of the *governing body* to report to the *governing body* on these matters.
- 6.11.7 G For the purposes of *COB 6.11.6G(2)*, appropriate skills and experience could have been gained in, for example, consumer protection, the life insurance industry, regulation or as a member of the accountancy, actuarial or legal professions.
- 6.11.8 G If a *person* or committee who provides the independent judgement under *COB 6.11.5G(2)* wishes to make a statement or report to *with-profits policyholders*, in addition to that made by a *firm* under *COB 6.11.9R*, a *firm* should facilitate this. *COB 6.11.12G* is also relevant to such a report.

#### **Annual report to with-profits policyholders**

- 6.11.9 R **A *firm* must produce an annual report to its *with-profits policyholders* stating whether, throughout the *financial year* to which the report relates, the *firm* believes it has complied with the obligations relating to *PPFM* referred to in *COB 6.11.4G* and setting out the *firm*'s reasons for that belief.**
- 6.11.10 R **The annual report in *COB 6.11.9R* must address all significant relevant issues, including the way in which the *firm* has:**
- (1) exercised, or failed to exercise, any discretion that it has in the conduct of its *with-profits business*; and
  - (2) addressed any competing or conflicting rights, interests or expectations of its *policyholders* (or groups of *policyholders*) and, if applicable, *shareholders* (or groups of *shareholders*).
- 6.11.11 R **Any report to *with-profits policyholders* from an *actuary* appointed under *SUP 4 (Actuaries)* must be annexed to the annual report in *COB 6.11.9R*.**
- 6.11.12 G Any statement or report made under *COB 6.11.8G* should be annexed to the annual report in *COB 6.11.9R*.
- 6.11.13 G The competing rights, interests or expectations in *COB 6.11.10R(2)* include the competing interests of different classes and generations of *with-profits policyholders*, and, if applicable, *shareholders*.

- 6.11.14 G In preparing the report to *with-profits policyholders* in COB 6.11.9R, a *firm* should take advice from an *actuary*.
- 6.11.15 G A *firm* should make the report in COB 6.11.9R available to *with-profits policyholders* within six *months* of the end of the *financial year* to which it relates. A *firm* may choose how it makes the report available. Methods of delivery might include publishing the report on the *firm's* website, providing copies on request, or including it in the *firm's* annual financial statements. A *firm* should notify its *with-profits policyholders* in any annual statements how copies of the report can be obtained.



## Annex C

### Amendments to the Supervision manual

In this Annex, underlining indicates new text and striking through indicates deleted text.

10.6.8 R (1) \_\_\_\_\_ If a *firm* is a *body corporate*, the *non-executive director function* is the function of acting in the capacity of a *non-executive director* of that firm.

(2) ~~If a *firm* is a *long-term insurer*, the *non-executive director function* is also the function of acting in the capacity of an individual (other than an individual performing the *director function* or the *non-executive director function* under (1)) who, as a member of a committee having the purpose of a With-profits Committee (see COB 6.11.6G(1)), has responsibility in relation to governance arrangements for *with-profits business* under COB 6.11 (Reporting to with-profits policyholders on compliance with PPFM).~~

10.6.9G Examples of responsibilities of a *non-executive director* may include:

...

(3) carrying out other responsibilities as assigned by the *firm*: for example, as a member of a board committee on audit or remuneration or as a member of a committee having the purpose of a With-profits Committee (see COB 6.11.6G(1)).

## Annex D

### Amendments to the Glossary

Insert the following new definitions in the appropriate alphabetical position:

<i>EEA insurer</i>	(in <i>COB</i> ) an <i>insurer</i> , other than a <i>pure reinsurer</i> or a <i>non-directive insurer</i> , whose head office is in any <i>EEA State</i> except the <i>United Kingdom</i> and which has received <i>authorisation</i> under article 6 of the <i>First Life Directive</i> or the <i>First Non-Life Directive</i> from its <i>Home State Regulator</i> .
<i>inherited estate</i>	the excess of assets maintained within a <i>with-profits fund</i> over and above the amount required to meet liabilities (including liabilities which arise from the regulatory duty to treat <i>customers</i> fairly in setting discretionary benefits).
<i>PPFM</i>	<i>Principles and Practices of Financial Management</i> .
<i>Principles and Practices of Financial Management</i>	the Principles and Practices of Financial Management which a <i>firm</i> carrying on <i>with-profits business</i> must establish, maintain and record under <i>COB</i> 6.10 (Principles and Practices of Financial Management).
<i>with-profits business</i>	any business of an <i>insurer</i> that may affect the amount or value of the assets comprising a <i>with-profits fund</i> .
<i>with-profits fund</i>	for the purposes of <i>COB</i> : (a) a <i>long-term insurance fund</i> (or that part of such a fund) in which <i>policyholders</i> are eligible to participate in any <i>established surplus</i> ; and (b) where it is an <i>insurer's</i> usual practice to restrict <i>policyholders'</i> participation in any <i>established surplus</i> to that arising from only a part of the fund (or part fund) falling within (a), that part (or that part of the part fund).
<i>with-profits policy</i>	a contract falling within a <i>class</i> of <i>long-term insurance business</i> which is eligible to participate in any part of any <i>established surplus</i> .
<i>with-profits policyholder</i>	a <i>policyholder</i> under a <i>with-profits policy</i> .
<i>with-profits practices</i>	the with-profits practices that a <i>firm</i> must establish, maintain and record under <i>COB</i> 6.10 (Principles and Practices of Financial Management).
<i>with-profits principles</i>	the with-profits principles that a <i>firm</i> must establish, maintain and record under <i>COB</i> 6.10 (Principles and Practices of Financial Management).



## ALTERNATIVE TRADING SYSTEMS INSTRUMENT 2003

### **Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions of the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 149 (Evidential provisions);
  - (3) section 156 (General and supplementary powers); and
  - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

### **Commencement**

- C. This instrument comes into force as follows:
- (1) the amendments in Annex A come into force on 1 April 2004;
  - (2) the remainder of this instrument comes into force on 1 July 2003.

### **Amendments to the Handbook**

- D. (1) COB, MAR, AUTH, CRED, ELM, EMPS, FREN, OMPS and SERV are amended in accordance with Annex A to this instrument;
- (2) The Reader’s Guide, MAR and the Glossary are amended in accordance with Annex B to this instrument.

### **Citation**

- E. This instrument may be cited as the Alternative Trading Systems Instrument 2003.

By order of the Board  
19 June 2003

## Annex A

### Amendments coming into force on 1 April 2004

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section is inserted, the place that it goes is indicated and the text is not underlined.

### Amendments to COB

4 Table Miscellaneous Transitional Rules

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
...					
<u>7</u>	<u>COB 4.2.5</u>	<u>R</u>	<p style="text-align: center;"><u>ATS terms of business</u></p> <p><i><u>A service company, or a firm that is undertaking oil market activity or other energy market activity, that operates an ATS as at the day on which COB 4.2.17E comes into force is not required to provide terms of business to a customer who has commenced using the ATS before that day.</u></i></p>	<u>Indefinitely</u>	<u>1 January 2004</u>
<u>8</u>	<u>COB 4.2.5 and COB 4.2.10</u>	<u>R</u>	<p><i><u>A firm need not, by reason of COB 4.2.17E, amend, or give notice of an amendment to, its terms of business to include provision about the additional matters in COB 4.2.17E in respect of a customer to whom it has provided terms of business before</u></i></p>	<u>Indefinitely</u>	<u>1 January 2004</u>

			the day on which <u>COB 4.2.17E</u> comes into force.		
--	--	--	---	--	--

...

1.2.1 R *COB* applies to every *firm*, except that:

- (1) *COB* 9 (Client assets) does not apply to an *incoming* EEA *firm* with respect to its *passport activities*;
- (2) for a *UCITS* *qualifier* and a *service company* that does not operate an *ATS*, only *COB* 1.9 (Application to electronic commerce activity providers) and *COB* 3 (Financial promotion), and any provision of *COB* incorporated into *COB* 1.9 or *COB* 3 by reference, applies;
- (2A) for a *service company* that operates an *ATS*, only *COB* 1.9 and *COB* 3, any provision of *COB* incorporated into *COB* 1.9 or *COB* 3 by reference and, in relation to the operation of the *ATS*, *COB* 4.2 (Terms of business), apply;

...

...

1.6.12 R Despite *COB* 1.6.6R to *COB* 1.6.11G, if a *firm* that is undertaking *oil market activity* or other *energy market activity* operates an *ATS*, *COB* 4.2 (Terms of business) applies in relation to the operation of the *ATS*.

...

- 4.2.11 E
- (1) A *firm* should, in order to provide adequate detail, include in its *terms of business* provided to a *customer*:
    - (a) a provision about each item set out in *COB* 4.2.15E ~~and~~ *COB* 4.2.16E and *COB* 4.2.17E, except those the *customer* has requested not to be included; and
    - (b) any further or alternative provisions that the *customer* has asked for and on his own initiative agreed with the *firm*;

to the extent that each such provision is relevant in the circumstance and that it is practicable to provide it.

- (1A) In relation to a *service company*, or a *firm* that is undertaking *oil market activity* or other *energy market activity*, that operates an *ATS*, the references in paragraph (1)(a) to *COB*

4.2.15E and COB 4.2.16E do not apply.

...

...

4.2.17 E Table: Content of terms of business provided to a customer:  
Operating an *ATS*

Operating an *ATS*

Additional contents in respect of operating an *ATS*

An *ATS operator* should also ensure that the *terms of business* provided to a *customer* contain information about the following:

- (1) how the *ATS* operates, including any order handling and order execution processes;
- (2) the status of other users of the *ATS*, for example whether *market counterparties*, *intermediate customers* or *private customers* and whether based within or outside the *United Kingdom*;
- (3) arrangements for the clearing and settlement of transactions, including the respective obligations and responsibilities (if any) of the *ATS operator* and the *customer* in relation to clearing and settlement;
- (4) if *investments* that are not *listed* are *traded* on the *ATS*:
  - (a) that *unlisted investments* are *traded* on the *ATS*; and
  - (b) that the *ATS operator* will advise the *customer* on request where publicly available information about such *investments* can be obtained;
- (5) whether transactions *executed* using the *ATS* are *reportable transactions*;
- (6) trading procedures (if any) that may be adopted in the event of system malfunction;
- (7) the circumstances in which the *ATS operator* can terminate the *customer's* access to the *ATS*;
- (8) procedures (if any) to be adopted in the case of trading errors or disputes; and

(9) whether investments traded on the ATS are qualifying investments for the purposes of the market abuse regime.

## Amendments to MAR

Table of Contents

...

### **MAR 5 Alternative Trading Systems**

- 5.1 Application and purpose
- 5.2 Guidance about what constitutes an ATS
- 5.3 Notification of establishment of an ATS
- 5.4 Requirements to be imposed on the Part IV permission of an ATS operator
- 5.5 Parts of the Handbook applicable to the operation of an ATS

...

3.1.1 R This chapter applies to every *firm* except:

- (1) a service company, unless the service company is an ATS operator, in which case, MAR 3.4.10G and MAR 3.4.10AG apply to the service company in relation to the operation of the ATS;
- (2) a non-directive friendly society;
- (3) a non-directive insurer;
- (4) a UCITS qualifier.

...

3.4.10A G An ATS operator should take reasonable steps to ensure that the respective roles and responsibilities of the ATS operator and the market counterparty in relation to use of the ATS are clear to the market counterparty.

...

After MAR 5.4, insert the following new section:

### **5.5 Parts of the Handbook applicable to the operation of an ATS**

5.5.1 G The purpose of this section is to help prospective and actual *ATS operators* find their way around the *Handbook* by setting out which parts of it apply to them when operating an *ATS*.



5.5.2 G The application of the *Handbook* to the operation of *ATSS* is summarised in *MAR 5.5.3G*. *ATS operators* should read applicable parts of the *Handbook* to find out what the detailed regulatory requirements are for operating *ATSS*.

5.5.3 G

Table Handbook provisions applicable to *ATSS*

	Part of Handbook	Applicability to <i>ATSS</i>
<b>High Level Standards</b>	Principles for Businesses ( <i>PRIN</i> )	This applies. However, note that some <i>Principles</i> are (partially) disapplied for <i>clients</i> that are <i>market counterparties</i> as further detailed in <i>PRIN 3.4</i> .
	Senior management arrangements, Systems and Controls ( <i>SYSC</i> )	This applies.
	Threshold Conditions ( <i>COND</i> )	This applies.
	Statements of Principle and Code of Practice for Approved Persons ( <i>APER</i> )	This applies to an <i>approved person</i> who performs a <i>controlled function</i> for an <i>ATS operator</i> .
	The Fit and Proper test for Approved Persons ( <i>FIT</i> )	This applies.
	General provisions ( <i>GEN</i> )	This applies.

<b>Business standards</b>	Interim Prudential sourcebooks ( <i>IPRU</i> )	These apply, as appropriate.
	Conduct of Business sourcebook ( <i>COB</i> )	<p>In general, <i>COB</i> applies to <i>ATS operators</i>.</p> <p><i>Service companies</i> that operate an <i>ATS</i> are subject to the provisions of <i>COB</i> mentioned in <i>COB</i> 1.2.1R(2A).</p> <p>There are special <i>terms of business</i> set out in <i>COB</i> 4.2.17E for <i>ATS operators</i> that have <i>customers</i> (as opposed to those whose only <i>clients</i> are <i>market counterparties</i>).</p> <p>Most of <i>COB</i> will not apply to <i>ATS operators</i> if their business is wholly within the scope of <i>MAR</i> 3 (Inter-professional conduct): see <i>COB</i> 1.3.4R.</p>
	Market Conduct sourcebook ( <i>MAR</i> )	<p><i>MAR</i> 1 (The Code of Market Conduct) applies. <i>MAR</i> 2 (Price Stabilising Rules) and <i>MAR</i> 4 (Endorsement of the Takeover Code) are likely to be of limited relevance to the business of an <i>ATS operator</i>.</p> <p><i>MAR</i> 3 (Inter-Professional Conduct) will ordinarily be relevant to <i>ATSs</i> whose <i>clients</i> are <i>market counterparties</i>. <i>MAR</i> 3.4.10AG is particularly relevant to the information that these <i>ATS operators</i> should provide to their <i>clients</i>.</p> <p>Ordinarily, <i>service companies</i> are not covered by <i>MAR</i> 3. However, <i>MAR</i> 3.1.1R provides that <i>MAR</i> 3.4.10G and <i>MAR</i> 3.4.10AG apply to a <i>service company</i> that operates an <i>ATS</i>.</p> <p><i>MAR</i> 5 (Alternative trading systems) is directly relevant to the operation of an <i>ATS</i>.</p>
	Training and Competence sourcebook ( <i>TC</i> )	This applies.
	Money Laundering sourcebook ( <i>ML</i> )	This applies.
<b>Regulatory processes</b>	Authorisation manual ( <i>AUTH</i> )	This applies in relation to an application by a prospective <i>ATS operator</i> for <i>authorisation</i> . In particular, <i>AUTH</i> 3.24.1G provides that if an applicant who wishes to operate an <i>ATS</i> intends to assume responsibility for the clearing or settlement of transactions effected using the <i>ATS</i> , the applicant should provide sufficient information with its application to demonstrate that it has adequate arrangements in place to ensure efficient clearing or settlement (as the case may be) of the transactions.
	Supervision manual ( <i>SUP</i> )	This applies.
	Enforcement manual ( <i>ENF</i> )	This applies.
	Decision making manual ( <i>DEC</i> )	This applies.

Redress	Dispute resolution: Complaints sourcebook ( <i>DISP</i> )	<i>ATS operators</i> are subject to the <i>compulsory jurisdiction</i> of the <i>Financial Ombudsman Service</i> .  However, a <i>firm</i> which notifies the <i>FSA</i> under <i>DISP</i> 1.1.7R that it does not conduct business with <i>eligible complainants</i> ( <i>persons</i> eligible to have a complaint considered under the <i>Financial Ombudsman Service</i> , as defined in <i>DISP</i> 2.4) will be exempt from the <i>rules</i> on complaint handling procedures for <i>firms</i> ( <i>DISP</i> 1.2 to <i>DISP</i> 1.7) and from the <i>Financial Ombudsman Funding rules</i> ( <i>DISP</i> 5.2 to <i>DISP</i> 5.8).
	Compensation sourcebook ( <i>COMP</i> )	<i>COMP</i> applies to all <i>firms</i> . However, <i>ATS operators</i> that do not conduct business that could give rise to a <i>protected claim</i> by an <i>eligible claimant</i> as defined and have no reasonable likelihood of doing so can gain exemption under <i>COMP</i> 13.3 from some compensation scheme levies.
Redress	Complaints against the FSA ( <i>COAF</i> )	This applies.
	Collective Investment Schemes Sourcebook ( <i>CIS</i> )	<i>ECO</i> applies to an <i>ATS operator</i> that is an <i>electronic commerce activity provider</i> .
Specialist sourcebooks	Credit Unions ( <i>CRED</i> )	<i>REC</i> does not apply to an <i>ATS operator</i> .  The other specialist sourcebooks are likely to be of limited relevance to an <i>ATS operator</i> in respect of its operation of an <i>ATS</i> .
	Electronic money ( <i>ELM</i> )	
	E-commerce Directive ( <i>ECO</i> )	
	Lloyd's ( <i>LLD</i> )	
	Professional firms ( <i>PROF</i> )	
	Recognised Investment Exchanges and Recognised Clearing Houses ( <i>REC</i> )	
Special guides	Service companies ( <i>SERV</i> )	This applies to a <i>service company</i> that operates an <i>ATS</i> .
	Energy market participants ( <i>EMPS</i> )	This applies to an <i>energy market participant</i> that operates an <i>ATS</i> .
	Oil market participants ( <i>OMPS</i> )	This applies to an <i>oil market participant</i> that operates an <i>ATS</i> .
	Small friendly societies ( <i>FREN</i> )	This is likely to be of limited relevance.

## Amendments to AUTH

### 3.24                    Specific obligations: applicants wishing to operate an ATS

3.24.1 G                If an applicant who wishes to operate an *ATS* intends to assume responsibility for the clearing or settlement of transactions effected using the *ATS*, the applicant should provide sufficient information with its application to demonstrate that it has adequate arrangements in place to ensure efficient clearing or settlement (as the case may be) of the transactions.

...

2 Table

<b>(1) Module of Handbook</b>	<b>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</b>	<b>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</b>
<p><b>1 MAR</b></p>	<p>...</p> <p><b>MAR 2 (Price stabilising rules)</b> Applies if the <i>firm</i> undertakes <i>stabilising action</i> and wishes to show that it has acted in conformity with <i>price stabilising rules</i> or that its <i>behaviour</i> conforms with <i>rules</i> in accordance with section 118(8) of the <i>Act</i> (Market abuse) (MAR 2.1 (Application)).</p> <p><b>MAR 3 (Inter-professional conduct)</b> Applies (MAR 3.1.4R).</p> <p><b>MAR 4 (Endorsement of the Take-over Code)</b> Applies to <i>firms</i> whose <i>permission</i> includes, or ought to include, any <i>designated investment business</i>, except as set out in MAR 4.4.1R.</p> <p><b><u>MAR 5 (Alternative Trading Systems)</u></b> Does not apply (MAR 5.1.1G)</p> <p>...</p>	<p>...</p> <p><b>MAR 2 (Price stabilising rules)</b> Only applies in so far as the <i>firm</i> undertakes <i>stabilising action</i> wishes to rely on a defence that it has acted in conformity with <i>price stabilising rules</i>, or that its <i>behaviour</i> conforms with <i>rules</i> in accordance with section 118(8) of the <i>Act</i> (Market abuse) (MAR 2.1.6R(1)).</p> <p><b>MAR 3 (Inter-professional conduct)</b> Does not apply (MAR 3.1.4R).</p> <p><b>MAR 4 (Endorsement of the Take-over Code)</b> Does not apply (MAR 4.4.1R(4)(b)).</p> <p><b><u>MAR 5 (Alternative Trading Systems)</u></b> Does not apply (MAR 5.1.1 G)</p> <p>...</p>

## Amendments to CRED

### Appendix 1

	Sourcebook or manual	Reference code
...	...	...
Business Standards	5 interim Prudential sourcebooks Conduct of Business Market conduct, including: Code of Market Conduct Price stabilising rules Inter-professional conduct <u>Alternative Trading Systems</u> Training and Competence Money laundering	IPRU COB MAR  TC ML
...	...	...

## Amendments to ELM

### ELM 1.5.2R

Block	Module	Application
...	...	...
Block 2 (Business Standards)	Market Conduct (MAR)	<i>MAR 1 (The Code of Market Conduct) applies if an <i>ELMI</i> is seeking <i>guidance</i> as to whether or not <i>behaviour</i> amounts to <i>market abuse</i>. <i>MAR 2 (Price Stabilising Rules)</i>, <i>MAR 3 (Inter-Professional Conduct)</i> and <i>MAR 4 (Endorsement of the Takeover Code)</i> do not apply to an <i>ELMI</i> when <i>issuing e-money</i>. <u><i>MAR 5 (Alternative Trading Systems)</i> will not apply to an <i>ELMI</i>, as there are restrictions on the type of business activities that an <i>ELMI</i> may carry on.</u></i>
...	...	...

## Amendments to EMPS

### EMPS 1.2.3G

	Part of Handbook	Applicability to energy market participants
...	...	...
Business Standards	<p>Conduct of Business sourcebook (COB)</p> <p>Market Conduct sourcebook (MAR)</p>	<p>Only some parts of <i>COB</i> apply to <i>energy market activity</i>: see <i>COB</i> 1.6.6R – <del><i>COB</i> 1.6.11G</del> <u><i>COB</i> 1.6.12R</u>.</p> <p>This applies; however <i>MAR</i> 2 (Price stabilising rules) is likely to be of only marginal relevance to the business of an <i>energy market participant</i>. <u><i>MAR</i> 5 (Alternative Trading Systems) applies to an <i>energy market participant</i> that operates an <i>ATS</i>.</u></p>
...	...	...

## Amendment to FREN

### FREN 1.2.2G Table

	Part of Handbook	Applicability to small friendly societies
...	...	...
	Market conduct sourcebook ( <i>MAR</i> )	<p><i>MAR</i> 1 (Code of Market Conduct) – this gives <i>guidance</i> on what does and does not amount to <i>market abuse</i>; this Code is relevant to all persons seeking <i>guidance</i> as to whether or not <i>behaviour</i> amounts to <i>market abuse</i>.</p> <p><i>MAR</i> 2 (Price stabilising rules) – applies to all <i>firms</i> but is likely to have limited relevance to small friendly societies.</p>

		<p><i>MAR 3</i> (Inter-professionals conduct) – does not apply.</p> <p><i>MAR 4</i> (Endorsement of the Takeover Code) - this applies to every <i>firm</i> whose <i>permission</i> includes, or ought to include, any <i>designated investment business</i>, but is likely to have limited relevance to small friendly societies.</p> <p><u><i>MAR 5</i> (Alternative Trading Systems) - this applies to a <i>firm</i> that operates an <i>ATS</i>, but is likely to have limited relevance to small friendly societies.</u></p>
...	...	...

### Amendments to OMPS

#### OMPS 1.2.2G

	Part of Handbook	Applicability to oil market participants
... Business Standards	<p>...</p> <p>Conduct of Business sourcebook (COB)</p> <p>Market Conduct sourcebook (<i>MAR</i>)</p>	<p>...</p> <p>Only some parts of <i>COB</i> apply to <i>oil market activity</i>: see <i>COB</i> 1.6.6R – <del><i>COB</i> 1.6.11G</del> <u><i>COB</i> 1.6.12R</u>.</p> <p>This applies; however <i>MAR 2</i> (Price stabilising rules) is likely to be of only marginal relevance to the business of an <i>oil market participant</i>. <u><i>MAR 5</i> (Alternative Trading Systems) applies to an <i>oil market participant</i> that operates an <i>ATS</i>.</u></p>
...	...	...

## Amendments to SERV

SERV 1.2.2G Table

	Part of Handbook	Applicability to service companies
...	...	...
Business Standards	<p>Conduct of Business sourcebook (<i>COB</i>)</p> <p>Market Conduct sourcebook (<i>MAR</i>)</p>	<p><i>COB</i> 1.9 (Application to electronic commerce activity providers) and <i>COB</i> 3 (Financial promotion rules), and any provision of <i>COB</i> incorporated by reference in <i>COB</i> 1.9 or <i>COB</i> 3, apply. <u><i>COB</i> 4.2 applies to a <i>service company</i> in relation to the operation of an <i>ATS</i>. The rest of <i>COB</i> does not apply: see <i>COB</i> 1.2.1R(2) and (2A).</u></p> <p>...</p> <p><i>MAR</i> 1 (Code of market conduct), <i>MAR</i> 2 (Price stabilising rules) and <i>MAR</i> 4 (Endorsement of the Takeover Code) apply to <i>service companies</i>.</p> <p><del><i>MAR</i> 3 (Inter-professional conduct) does not apply to <i>service companies</i>: see <i>MAR</i> 3.1.1R.</del></p> <p><u>If a <i>service company</i> operates an <i>ATS</i>, then <i>MAR</i> 3.4.10G and <i>MAR</i> 3.4.10AG apply to the <i>service company</i> in relation to the operation of the <i>ATS</i>. Otherwise <i>MAR</i> 3 (Inter-Professional Conduct) does not apply to <i>service companies</i>: see <i>MAR</i> 3.1.1R.</u></p> <p><u><i>MAR</i> 5 (Alternative Trading Systems) applies to <i>service companies</i> that operate an <i>ATS</i>.</u></p>
...	...	...



## Annex B

### Amendments coming into force on 1 July 2003

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section is inserted, the place that it goes is indicated and the text is not underlined.

### Amendments to the Reader's Guide

#### Contents of the Handbook

	Sourcebook or manual	Reference Code
...	...	...
Business Standards	Conduct of Business	COB
	Market Conduct: Code of market conduct Price stabilising rules Inter-Professional conduct Endorsement of the Takeover Code <u>Alternative Trading Systems</u>	MAR
...	...	...

### Amendments to MAR

#### Table of Contents

MAR 4	Endorsement of the Takeover Code
4.1	Application and Purpose
4.2	Endorsement
4.3	Further support of the Takeover Panel's Functions
4.4	Exceptions
<u>MAR 5</u>	<u>Alternative Trading Systems</u>
<u>5.1</u>	<u>Application and purpose</u>
<u>5.2</u>	<u>Guidance about what constitutes an ATS</u>
<u>5.3</u>	<u>Notification of establishment of an ATS</u>

5.4 Requirements to be imposed on the Part IV permission of an ATS operator

5 Annex 1 MAR 5 Annex 1G

...

After Chapter 4 of *MAR*, insert the following new chapter:

Chapter 5

**Alternative Trading Systems**

5.1 **Application and purpose**

**Application**

- 5.1.1 G This chapter is relevant to every *firm* that has, or intends to apply for, a *Part IV permission* and that:
- (a) if it is a *UK domestic firm*, operates or proposes to operate an *ATS* from an establishment in the *United Kingdom* or elsewhere;
  - (b) if it is an *overseas firm*, operates or proposes to operate an *ATS* from an establishment in the *United Kingdom*.

- 5.1.2 G This chapter is subject to the provisions in *ECO*. For example, this chapter is not relevant to an *incoming ECA provider* acting as such.

**Purpose**

- 5.1.3 G The purpose of this chapter is to provide a framework for implementing several of the *CESR ATS standards*. The *FSA* considers that the implementation of these standards will protect *consumers*, promote market confidence, reduce *financial crime* and promote public understanding of the *financial system*. These standards, and therefore this chapter, do not apply to *bilateral systems*, which are excluded from the definition of an *ATS*.

5.2 **Guidance about what constitutes an ATS**

- 5.2.1 G *MAR 5.2.2G* to *MAR 5.2.8G* set out *guidance* on the meaning of the expressions *ATS* and *bilateral system* (as defined in the *Glossary*). This *guidance* is adapted from the guidance contained in the *CESR ATS standards* on the meaning of “qualifying system” (which is the term equivalent to *ATS* used in those standards).

### **“System”**

- 5.2.2 G For the purposes of the definitions of an *ATS* and a *bilateral system*, a system is intended to include not only the electronic parts (if any) of a system but also any rules, protocols, procedures and agreements that make up the system. It is also intended to cover the various parts of a system whether provided directly by the *ATS operator* or by another *person* under an arrangement with the *ATS operator*.

### **“Price taking systems”**

- 5.2.3 G A system may be an *ATS* although it does not directly involve price formation. For example, a *price taking system* such as certain crossing systems may be an *ATS*.

### **“Buying and selling interests”**

- 5.2.4 G The expression buying and selling interests is intended to include not only orders, but also quotes and indications of interest.

### **“Brings together”**

- 5.2.5 G Buying and selling interests will be regarded as being brought together in the system if they are brought together under the system’s rules or by means of the system’s protocols or internal operating procedures. The concept of bringing together is intended to cover any process under which interests interact; this may be by automatic matching, by way of selection of interests by users themselves or otherwise. It is not necessary that the interests be displayed to users. The fact that, after interests are matched, the users must ratify a proposed transaction does not mean that the interests are not brought together in the system. However, systems such as order routing systems where interests are transmitted but do not interact are not intended to be covered by the definition of an *ATS*.

### **“Non-discretionary rules”**

- 5.2.6 G The reference to non-discretionary rules in the definition of an *ATS* is intended to exclude systems where the operator exercises discretion as to how the interests interact. However, the reference is not intended to exclude a system just because the operator has discretion as to whether or not to enter an interest into the system. It is also not intended to exclude a system just because users have discretion about whether or not to take up or accept any expression of interest.

### **Bulletin boards etc**

- 5.2.7 G A bulletin board or similar system where users contact each other outside the system (that is, not under the system’s rules and not by means of the system’s protocols or internal operating procedures) to

negotiate the material terms of transactions will not be covered by the definition of an *ATS*.

### **Bilateral system/central counterparty**

- 5.2.8 G The definition of an *ATS* excludes *bilateral systems*. The definition of *bilateral system* is intended to capture a system that is like an *ATS* except that a single *person* enters into one side of every transaction effected using the system. It is not however intended to cover central counterparty systems, where in substance participants deal among themselves but where their deals are assumed by the central counterparty as buyer and seller. A central counterparty will have a flat book unless there is a default or mistake, while typically the counterparty in a *bilateral system* will take principal positions in *investments* on a continuous basis. The definition of *bilateral system* is slightly flexible in that occasional crossings of client orders will not of itself make the system an *ATS*. It also includes a system where, rather than a single *person*, one of a number of *persons* in the same *group* enters into one side of every transaction effected using the system.

## **5.3 Notification of establishment of an ATS**

### **Application for permission**

- 5.3.1 G A *person* who applies for a *Part IV permission* and proposes to operate an *ATS* will be required to complete appropriate parts of the application pack relating to the operation of an *ATS* (see *AUTH* 3.9 (Procedures in relation to applications for Part IV permission)).

### **Variation of permission to operate an ATS**

- 5.3.2 G If a *firm* that proposes to operate an *ATS* applies for variation of *Part IV permission* to carry on an additional *regulated activity* necessary to operate the *ATS*, the *FSA* considers that, for the purposes of *SUP* 6.3.20 (Applications involving significant changes), the proposal will usually cause a significant change to the *firm's* business or risk profile. The *FSA* may therefore require the *firm* to complete the appropriate parts of the full application pack (see *AUTH* 3.9), as directed by the *FSA*.

### **Notice by firm that already has permission to operate an ATS**

- 5.3.3 G If a *firm* that proposes to operate an *ATS* already has *permission* to carry on the *regulated activity* necessary to operate the *ATS*, the *firm* should give notice of the proposal to the *FSA* before it begins to operate the *ATS*, in accordance with *Principle 11* (Relations with regulators). This is because the *FSA* considers that this is a business expansion that could have a significant impact on the *firm's* risk profile or resources (see *SUP* 15.3.8 G). When the *FSA* receives

notice, it may request further information from the *firm* such as the completion of a systems form.

### **Notification of significant changes to ATS**

- 5.3.4 G The *FSA* would also expect an *ATS operator* to give the *FSA* notice if there is any significant change to the operation of an *ATS* that it operates, in accordance with *Principle 11* (Relations with regulators). Notice should be given as soon as reasonably practicable after the change.
- 5.4 **Requirements to be imposed on the Part IV permission of an ATS operator**
- 5.4.1 G The *FSA* proposes to implement several of the *CESR ATS standards* by imposing *requirements* on the *Part IV permissions* of *ATS operators*.
- 5.4.2 G The *FSA* proposes to impose the *requirements* on the *Part IV permissions* of *ATS operators* in a way that has regard to the principle in the *CESR ATS standards* that the standards should be implemented in a differentiated way, taking into account the particular risk to be addressed and each *ATS's* circumstances.
- 5.4.3 G If a *person* who proposes to operate an *ATS* applies for a *Part IV permission*, the *FSA* will be minded to impose the *requirements* under section 43 of the *Act* (Imposition of requirements).
- 5.4.4 G If a *firm* that proposes to operate an *ATS* applies for a variation of *Part IV permission* to carry on an additional *regulated activity* necessary to operate the *ATS*, the *FSA* will be minded to impose the *requirements* under section 44 (Variation etc. at request of authorised person) or section 45 (Variation etc on the Authority's own initiative) of the *Act*.
- 5.4.5 G In relation to current *ATS operators*, or *firms* proposing to operate an *ATS* that have *permission* to carry on the *regulated activity* necessary to operate the *ATS*, the *FSA* will be minded to impose the *requirements* under section 44 or 45 of the *Act*.
- 5.4.6 G The *FSA* may decide not to impose particular *requirements* in particular cases if it is not appropriate to do so. For example, the *FSA* will be minded not to impose *requirements* for pre-trade information to be provided to users or published on *ATS operators* that operate *price taking systems* or request for quote systems. Also, it will be minded not to impose *requirements* for publication of post-trade information on *ATS operators* that operate *ATSs* that facilitate trading in interest-rate swaps, *contractually based investments* relating to currency, or *debt securities* other than benchmark bonds.

5.4.7 G The *FSA* proposes to impose *requirements* for publication of pre-trade and post-trade information that are no more onerous in relation to an *investment* than the standard that applies under the *Act* or relevant national law of another State (as the case may be) to the exchange operating the underlying market for the *investment*.

5.4.8 G *MAR 5* Ann 1G sets out an illustration of the form of *requirements* that the *FSA* will be minded to impose on the *Part IV* permission of an *ATS* operator. The exact form may vary to take into account the matters referred to in *MAR 5.4.2G*. The *FSA* may also consider setting out more detail in the *requirements* if the *FSA* considers it appropriate to do so (for example, if requested to do so by an *ATS* operator).

...

MAR 5 Annex 1 G

### **Illustrative form of requirements: Alternative Trading Systems**

#### **Fair and orderly trading**

1. The *firm* must, in relation to the operation of an *ATS*, have appropriate arrangements in place designed to ensure:
  - (a) efficient pricing and the equitable treatment of users;
  - (b) a trading methodology that enables fair and orderly trading; and
  - (c) that sufficient information about quotes, orders and completed transactions is made available to users.

#### **Publication of pre-trade information**

2. (1) This *requirement* only applies in relation to *shares traded* on an *ATS* and only if those *shares* are also traded on a *UK RIE* or a *regulated market*.
- (2) The *firm* must, in relation to the operation of an *ATS*, have appropriate arrangements in place to make publicly available information about quotes or orders or both relating to *shares traded* on the *ATS* that the *ATS* displays or advertises to users.

#### **Publication of post-trade information**

3. (1) This *requirement* only applies in relation to *investments* traded on an *ATS* if those *investments*, or *investments* that are substantially similar in nature, are traded on a *UK RIE*, a *regulated market* or an *EEA commodities market*.
- (2) The *firm* must, in relation to the operation of an *ATS*, have appropriate arrangements in place to make publicly available information about the price, volume and time of completed transactions for *investments traded* on the *ATS*. For large transactions in *debt securities*, an indication that volume exceeded a certain figure (not being less than £7 million or its equivalent) instead of the actual volume is sufficient.

### **Method of publication**

4. Information about quotes, orders or transactions shall be treated as being publicly available under *requirements 2* and *3* if it is available on reasonable commercial terms. The *firm* may make information publicly available under those *requirements* by publishing the information itself (for example, by posting data on a web-site) or by arranging with a third party (such as an information vendor, *regulated market* or consolidated quotation system) to publish the information.

### **Timing of publication**

5. (1) For the purposes of *requirements 1, 2* and *3*, information about quotes, orders and transactions should be made available in a timely manner. In particular, information should be made available to users and to subscribers close to the time when the quote or order is given or the transaction is executed. Information may be made available to *persons* other than users or subscribers with a reasonable delay.
- (2) The *firm* may make information about a *large order, quote or transaction* available to users under *requirement 1* or publicly available under *requirement 2* or *3* at a time later than that specified in (1), but only to the extent reasonably necessary to protect the interests of the relevant user who placed the order, gave the quote or executed the transaction.

### **Monitoring of trading**

6. (1) The *firm* must, in relation to the operation of an *ATS*:
  - (a) have appropriate arrangements in place that enable it to monitor transactions undertaken on the *ATS* to identify suspected breaches of any rules relating to fair and orderly trading on the *ATS* and conduct that may constitute *market abuse*;
  - (b) report suspected material breaches of its rules relating to fair and orderly trading on the *ATS* or suspected *market abuse* to the *FSA* and other appropriate organisations; and
  - (c) supply relevant information to the *FSA* as soon as practicable regarding the suspected breaches or suspected *market abuse* and provide full assistance to the *FSA* in investigating the suspected breach or suspected *market abuse*.
- (2) The functions referred to in (1) may be performed by the *firm* itself or by another *person* (such as the operator of a *regulated market* for the particular *investment*) under a formal arrangement with the *firm*.
- (3) In (1), “rules” includes protocols, procedures or terms of, or established under, any agreement between the *firm* and a user.

### **Meaning of “appropriate arrangements”**

7. In *requirements 1, 2, 3* and *6*, “appropriate” means appropriate having regard to the nature of the system, the nature and liquidity of *investments traded* on the system, the experience of users, the extent to which the wider market in the particular *investment* involves *private customers*, and the significance of the system in the overall market for the *investment* and, also in relation to *requirement 6*, the susceptibility of the *investment* traded to *market abuse*.

### Access to sufficient publicly available information

8. (1) The *firm* must, in relation to the operation of an *ATS*, provide, or be reasonably satisfied that there is publicly available, sufficient information to enable users who are *customers* to make a reasonably informed judgement about the value of each *investment traded on* the system and the risks associated with that *investment*.
- (2) In (1), “sufficient” means sufficient taking into account the nature and experience of users of the system who are *customers* and the type of *investment traded on* the system.
- (3) For the purposes of (1), if an *investment* is admitted to trading on an *RIE*, a *regulated market* or an *EEA commodities market* (and is not suspended from trading on the *RIE* or market), the *firm* may be reasonably satisfied that there is publicly available sufficient information about that *investment* to enable users who are *customers* to make a reasonably informed judgement about the *investment*.

### Amendments to the Glossary

Insert the following new definitions in the appropriate alphabetical position:

<i>alternative trading system</i>	a system that brings together multiple buying and selling interests in <i>designated investments</i> (other than <i>life policies</i> or <i>stakeholder pension schemes</i> or <i>rights to or interests in life policies</i> or <i>stakeholder pension schemes</i> ), in the system and according to non-discretionary rules set by the system’s operator in a way that results in a contract, but does not include:  (a) a system that is operated by an <i>RIE</i> or that is a <i>regulated market</i> or an <i>EEA commodities market</i> ; or  (b) a <i>bilateral system</i> .
<i>ATS</i>	<i>alternative trading system</i> .
<i>ATS operator</i>	a <i>firm</i> that operates an <i>ATS</i> or that has accepted responsibility for the operation of an <i>ATS</i> by an <i>appointed representative</i> .



<i>bilateral system</i>	a system that brings together buying and selling interests in the way described in the definition of an <i>alternative trading system</i> , where a single <i>person</i> enters into one side of every transaction effected using the system, on his own account and not merely as a central counterparty interposed between a buyer and seller, or would enter into every trade in that way but for <i>client</i> orders that are crossed occasionally. This definition includes such a system where, rather than a single <i>person</i> , it is one of a number of <i>persons</i> in the same <i>group</i> that enters into one side of every transaction effected using the system.
<i>CESR ATS standards</i>	the Standards for the Regulation of Alternative Trading Systems published by the Committee of European Securities Regulators.
<i>EEA commodities market</i>	a market that facilitates trading in <i>derivatives</i> relating to <i>commodities</i> (other than a market operated by an <i>RIE</i> ) and which is operated by an entity that has its head office situated in the <i>EEA</i> and that is regulated as an exchange.
<i>large order, quote or transaction</i>	(in relation to an <i>ATS</i> ) an order, quote or transaction relating to an <i>investment traded on</i> an <i>ATS</i> , the publication of details of which at the time of the order, quote or transaction might significantly affect the price of the relevant investment to the detriment of the <i>person</i> placing the order, providing the quote or entering into the transaction (as the case may be).
<i>price taking system</i>	an <i>ATS</i> that facilitates transactions by reference to prices established on a market or another <i>ATS</i> .
<i>traded on</i>	(in relation to an <i>ATS</i> ) traded by means of the system including under the rules of, or by means of the protocols or operating procedures of, the system.

**COMPENSATION SOURCEBOOK (DISSOLVED COMPANIES)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 157(1) (Guidance);
  - (4) section 213 (The compensation scheme); and
  - (5) section 214 (General).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 August 2003 for all defaults declared by the Financial Services Compensation Scheme on or after 1 December 2001.

**Amendments to the Compensation sourcebook**

- D. The Compensation sourcebook is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Compensation Sourcebook (Dissolved Companies) Instrument 2003.

By order of the Board  
19 June 2003

## Annex

### Amendments to the Compensation sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

8.2.2G A rejection under *COMP* 8.2.1R does not mean that the claimant cannot receive compensation. A rejected application may be resubmitted, with the appropriate amendments. An application rejected under *COMP* 8.2.3R may be resubmitted if *COMP* 8.2.5R applies.

8.2.3R ~~Unless *COMP* 8.2.4R applies, the~~ *FSCS* must reject an application for compensation if: ~~the liability of the *relevant person* to the claimant has been extinguished by the operation of law, or~~

(1) ~~the~~ *FSCS* considers that a civil claim in respect of the liability would have been defeated by a defence of limitation at the earlier of:

~~(1)(a)~~ (a) the date on which the *relevant person* is determined to be in default; ~~or~~ and

~~(2)(b)~~ (b) the date on which the claimant first indicates in writing that he may have a claim against the *relevant person*;

unless *COMP* 8.2.4R applies; or

~~(2)~~ the liability of the *relevant person* to the claimant has been extinguished by the operation of law, unless *COMP* 8.2.5R applies.

...

~~8.2.5R~~ For claims made in connection with *protected investment business*, if a *relevant person*, incorporated as a *company*, has been dissolved with the result that its liability to the claimant has been extinguished by operation of law, the *FSCS* must treat the claim, for the purposes of paying compensation, as if the *relevant person* had not been dissolved.

~~8.2.6G~~ *COMP* 8.2.5R means that the *FSCS* will be able to pay compensation in cases where:

~~(1)~~ the *company* was declared in default on or after 1 December 2001; and

~~(2)~~ at the time the application for compensation is made, the *company* has been dissolved.

**COLLECTIVE INVESTMENT SCHEMES (UCITS AMENDING DIRECTIVE)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions:
- (1) the following sections of the Financial Services and Markets Act 2000 (the "Act"):
    - (a) section 138 (General rule-making power);
    - (b) section 140 (Restrictions on managers of authorised unit trust schemes);
    - (c) section 156 (General supplementary powers);
    - (d) section 157 (Guidance);
    - (e) section 213 (The Compensation Scheme);
    - (f) section 214 (General);
    - (g) section 242 (Applications for authorisation of unit trust schemes);
    - (h) section 247 (Trust scheme rules);
    - (i) section 248 (Scheme particulars rules);
    - (j) section 270 (Schemes authorised in designated countries or territories);
    - (k) section 274 (Applications for recognition of individual schemes);
    - (l) section 278 (Rules as to scheme particulars); and
    - (m) section 340 (Appointment); and
  - (2) regulations 6 (FSA rules) and 12 (Applications for authorisation ) of the Open-Ended Investment Company Regulations 2001.

- B. The provisions of or under the Act listed above are specified for the purpose of section 153 (2) of the Act (Rule – making instruments).

### **Commencement**

- C. This instrument comes into force on 13 February 2004.

### **Amendments to the Handbook**

- D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
PRIN	Annex A
SYSC	Annex B
IPRU(INV)	Annex C
COB	Annex D
AUTH	Annex E
SUP	Annex F
DEC	Annex G
COMP	Annex H
CIS	Annex I
Glossary	Annex J

### **Citation**

- E. This instrument may be cited as the Collective Investment Schemes (UCITS Amending Directive) Instrument 2003.

By order of the Board

17 July 2003

**Annex A**  
**Amendments to Principles for Businesses (PRIN)**

In this Annex, underlining indicates new text.

Table 3.3.1 R (Territorial application of the Principles)

Principle	Territorial application
...	
<b><i>Principles 6, 7, 8, 9 and 10</i></b>	<b><u><i>Principle 8, in a prudential context, applies with respect to activities wherever they are carried on; otherwise apply with respect to activities carried on from an establishment maintained by the <i>firm</i> or its <i>appointed representative</i> in the <i>United Kingdom</i> unless another applicable <i>rule</i> which is relevant to the activity has a wider territorial scope, in which case the <i>Principle</i> applies with that wider scope in relation to the activity described in that <i>rule</i>.</i></u></b>
...	

**Annex B**  
**Amendments to Senior Management Arrangements, Systems  
and Controls Sourcebook (SYSC)**

In this Annex, underlining indicates new text.

Appendix 1

Matters reserved to a Home State regulator

1.1.2        G     ...

- (1)        the *Single Market Directives* expressly reserve responsibility for the prudential supervision of an *ISD investment firm*, *BCD credit institution*, *UCITS management company* or *passporting insurance undertaking* to the *firm's Home State regulator*; accordingly, the *FSA*, as *Host State regulator*, is entitled to regulate only the conduct of the *firm's* business within the *United Kingdom*;

...

...

## Annex C

### Amendments to the Interim Prudential Sourcebook for Investment Businesses (IPRU(INV))

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section of text is being inserted, the place that it goes is indicated and it is not struck through or underlined.

Before Chapter 1, insert the following:

#### Transitional provisions

1 Table Transitional provisions applying to IPRU(INV)

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
1	<i>IPRU (INV) 7</i>	R	A <i>UCITS management company</i> authorised on or before 12 February 2004 need not comply with the provisions in <i>IPRU(INV) 7</i> until 12 February 2007 provided it continues to comply instead with the provisions in <i>IPRU(INV) 5</i> and it continues to restrict its activities to those specified under <i>CIS 16.5.1R (1) to (3)</i> .	From 13/2/04 to 12/2/07	13/2/04



1.2 APPLICATION

1.2.1 R The *Glossary* ~~annexed to the General Provisions Instrument 2001~~ applies to the transitional provisions, this chapter *IPRU(INV)* 1, *IPRU(INV)* 2, *IPRU(INV)* 4 and *IPRU(INV)* 6.

1.2.2 R (1) *IPRU(INV)* applies to:

...

(f) a *service company*; ~~and~~

(g) the *Society of Lloyd's* (in relation to *underwriting agents*); and

(h) a *UCITS management company*.

...

1.2.5 R Table

This table belongs to *IPRU (INV)* 1.2.3R

*Professional firm*

Chapters 1 and 2

...

...

*UCITS management company*

Chapters 1 and 7

...

Chapter 5

...

## APPENDIX 1 (INTERPRETATION)

### GLOSSARY OF TERMS FOR CHAPTER 5 (FORMER IMRO FIRMS)

The following words or terms throughout Chapter 5 are to have the meanings given to them below if not inconsistent with the subject or context. If a defined term does not appear in the Chapter 5 glossary below, the definition appearing in the *Glossary* annexed to the General Provisions Instrument 2001 ("the *Glossary*") applies.

...

*consolidated supervision* means, in relation to a *firm* which is a member of a *group*, the application of Chapter 5, or in the case of a *UCITS management company* Chapter 7, of the Interim Prudential Sourcebook to:

- (a) that *firm* on a solo basis; and
- (b) that *firm* and any other member of that *group* of which the *firm* is a member on a consolidated basis.

*financial resources requirement*

- (a) (in relation to a *UCITS management company*) has the meaning given in rule 7.2.1R (2) and (3);
- (b) (in relation to a *firm* other than one in (a)) has the meaning given in rule 5.2.3(1) (a) to (c) (Determination of requirement).

*funds under management*

- (1) *collective investment schemes* other than *OEICs* managed by the *firm* including *schemes* where it has delegated the management function but excluding *schemes* that it is *managing* as delegate; and
- (2) *OEICs* for which the *firm* is the designated management company.

*Glossary* means the ~~Glossary giving the meanings of the defined expressions used in the Handbook~~ glossary of defined terms which applies for other parts of the *Handbook* as amended from time to time.

*initial capital* (in relation to a *UCITS management company*) means capital calculated in accordance with Table 7.3.1R (Method of calculation of financial resources) composed of the specified items set out in that Table.

*liquid capital*

- (a) (in relation to a UCITS management company) means capital calculated in accordance with Table 7.3.1R composed of the specified items set out in that Table;
- (b) (in relation to a firm other than one in (a)) has the meaning given in rule 5.2.2(2) and Table 5.2.2(1) (Calculation of own funds and liquid capital).

*own funds*

- (a) (in relation to a UCITS management company) means capital calculated in accordance with Table 7.3.1R composed of the specified items set out in that Table;
- (b) (in relation to a firm other than one in (a)) has the meaning given in rule 5.2.2(1) (Own funds) and Table 5.2.2(1) (Calculation of own funds and liquid capital).

After Chapter 6 (Service Companies), insert the following new chapter:

## 7 UCITS MANAGEMENT COMPANIES

### 7.1 INTRODUCTION

#### Application

7.1.1 R (1) This chapter, (*IPRU (INV) 7*) and any provisions of Chapter 5 (*IPRU (INV) 5*) incorporated into this chapter by reference, apply to a *firm* which is a *UCITS management company* but not an *EEA UCITS management company*.

(2) The definitions in the Glossary at Appendix 1 to Chapter 5 (*IPRU(INV) 5*) apply to this chapter.

7.1.2 G *Firms* are reminded that a *UCITS management company* can be either:

(1) a *UCITS firm*; or

(2) a *UCITS investment firm*.

#### Purpose

7.1.3 G (1) The purpose of this chapter is to amplify *Principle 4* (Financial resources) which requires a *firm* to maintain adequate financial resources to meet its *investment business* commitments and to withstand the risks to which its business is subject. This assists in the achievement of the *regulatory objectives* of consumer protection and market confidence.

(2) This chapter also implements certain requirements of the *UCITS Directive*, as amended by the amending Council Directive 2001/107/EC, which among other matters imposes capital requirements on a *UCITS management company*.

### 7.2 FINANCIAL RESOURCES AND FINANCIAL RESOURCES REQUIREMENTS

7.2.1 R (1) A *firm* must ensure that it has at all times financial resources calculated in accordance with Table 7.3.1 R which equal or exceed the applicable *financial resources requirement*.

(2) A *firm* must calculate its *financial resources requirement* in accordance with *rule 7.2.2 R*.

(3) In addition to (1), a *UCITS investment firm* must also ensure that it has at all times *liquid capital* calculated in accordance with Table 7.3.1 R which equal or exceed its liquid capital resource requirement.

(4) A *UCITS investment firm* must calculate its liquid capital resource requirement in accordance with *rule 7.2.3 R*.

## Requirements

- 7.2.2 R The *financial resources requirement* for a *firm* is calculated in accordance with whichever of (1) or (2) produces the higher amount:
- (1) subject to a maximum requirement of €10,000,000:
    - (a) *initial capital* requirement of €125,000; plus
    - (b) if the *funds under management* exceed €250,000,000, an additional amount of 0.02% of the excess; or
  - (2) 13/52 of its annual audited fixed expenditure calculated in accordance with *rule 7.2.4 R*.
- 7.2.3 R The liquid capital resource requirement for a *UCITS investment firm* is the sum of (1) and (2):
- (1) 13/52 of annual audited fixed expenditure calculated in accordance with *rule 7.2.4 R*; and
  - (2) in respect of *designated investment business* other than when undertaking *scheme management activity* the sum of its:
    - (a) position risk requirement calculated in accordance with Table 5.2.3 (5)(b);
    - (b) counterparty risk requirement calculated in accordance with Table 5.2.3 (5)(c);
    - (c) foreign exchange requirement calculated in accordance with Table 5.2.3 (5)(d); and
    - (d) other assets requirement calculated in accordance with Table 5.2.3 (5)(e).
- 7.2.4 R For the purposes of *rules 7.2.2(2)R* and *7.2.3(1)R* a *firm's* annual audited fixed expenditure is:
- (1) the amount described as total expenditure in the most recent *annual financial return*, less the following items (if they are included within such expenditure):
    - (a) staff bonuses, except to the extent that they are guaranteed;
    - (b) *employees' and directors' shares* in profits, except to the extent that they are guaranteed;
    - (c) other appropriations of profits;

- (d) shared *commission* and fees payable which are directly related to *commission* and fees receivable, which are included within total revenue;
  - (e) interest charges in respect of borrowings made to finance the acquisition of the *firm's readily realisable investments*;
  - (f) interest paid to *customers* on *client money*;
  - (g) interest paid to *counterparties*;
  - (h) fees, brokerage and other charges paid to *clearing houses*, exchanges and *intermediate brokers* for the purposes of *executing*, registering or clearing *transactions*;
  - (i) foreign exchange losses;
  - (j) other variable expenditure; or
- (2) where the previous accounting period does not include twelve months' trading, an amount calculated in accordance with paragraph (1) above pro-rated to an equivalent annual amount; or
  - (3) where a *firm* has not prepared an *annual financial return* or *annual accounts* since the commencement of its *permitted business*, an amount based on forecast expenditure included in the budget for the first twelve months' trading, as submitted with its application for authorisation.

7.2.5

- G A *firm's* financial resources requirement will be recalculated and audited annually when its *annual financial return* is prepared. The *firm* must maintain financial resources sufficient to meet its new financial resources requirement from the date on which the *annual financial return* is approved by the auditor. The annual audited fixed expenditure, applicable at the *accounting reference date* to which the *annual financial return* is prepared, will be that based on the previous year's figures. This will usually be the same as that used in the fourth quarter's *quarterly financial return* prepared to the same *accounting reference date*.

7.3 METHOD OF CALCULATION OF FINANCIAL RESOURCES

7.3.1 R This table belongs to *rule 7.2.1R (1)*

PART I	
A <i>firm</i> must calculate its financial resources as shown below, subject to the detailed requirements set out in Part II.	
Financial resources	Category Part II Para
<b>TIER 1</b>	
(1) Paid-up share capital (excluding preference shares)	2
(2) Share premium account	} <b>A</b>
(3) Audited reserves	
(4) Non-cumulative preference shares	
(5) Investments in own shares	
(6) Intangible assets	} <b>B</b>
(7) Material current year losses	
(8) Material holdings in credit and financial institutions	
<b>Initial capital = (A-B) =</b>	<b>C</b> 1(b)
<b>TIER 2</b>	
(9) Revaluation reserves	} <b>D</b>
(10) Fixed term cumulative preference share capital	
(11) Long-term Qualifying Subordinated Loans	
(12) Other cumulative preference share capital and debt capital	
(13) Qualifying arrangements	
<b>Own funds = (C+D) =</b>	<b>E</b>
<b>TIER 3</b>	

(14) Illiquid assets	<b>F</b>	10
<b>Financial resources = (E-F) =</b>	<b>G</b>	
(15) Short-term Qualifying Subordinated Loans and excess Tier 2 capital		1(e);9
(16) Not used	<b>H</b>	
(17) Qualifying Property		11
<b>Liquid capital = (G+H)</b>		

+

PART II	
DETAILED REQUIREMENTS	
<b>1 Ratios</b>	
(Items 10, 11 and 15)	
(a)	the total of fixed term cumulative preference shares (item 10) and long-term <i>qualifying subordinated loans</i> (item 11) that may be included in Tier 2 capital is limited to 50 per cent of Tier 1 capital (But see sub-paragraph (d) below);
(b)	Tier 1 capital must equal or exceed €125,000 at all times;
(c)	Tier 2 capital must not exceed 100 per cent of Tier 1 capital;
(d)	capital which would otherwise qualify as Tier 2 capital but for the operation of paragraphs (a) and (c) may be treated as Tier 3 capital (liquid capital) for <i>UCITS investment firms</i> subject to sub-paragraph (e) below; and
(e)	the total of the excess of Tier 2 capital so treated as Tier 3 capital and short-term <i>qualifying subordinated loans</i> (item 15) may not exceed 250 per cent of an amount equal to Tier 1 capital less the <i>other assets requirements</i> calculated in accordance with Table 5.2.3(5)(e).
<b>2 Non corporate entities</b>	
(a)	In the case of partnerships or sole traders, the following terms should be substituted, as appropriate, for items 1 to 4 in Tier 1 capital:
(i)	partners' capital accounts (excluding loan capital);
(ii)	partners' current accounts (excluding unaudited profits and loan capital);
(iii)	proprietor's account (or other term used to signify the sole trader's capital but excluding unaudited profits).
(b)	Loans other than <i>qualifying subordinated loans</i> shown within partners' or proprietors' accounts must be classified as Tier 2 capital under item 12.



### **3 Intangible assets (Item 6)**

Intangible assets comprise:

- (a) formation expenses to the extent that these are treated as an asset in the *firm's* accounts;
- (b) goodwill, to the extent that it is treated as an asset in the *firm's* accounts; and
- (c) other assets treated as intangibles in the *firm's* accounts.

### **4 Material current year losses (Item 7)**

Losses in current year operating figures must be deducted when calculating Tier 1 capital if such losses are material. For this purpose profits and losses must be calculated quarterly, as appropriate. If this calculation reveals a net loss it shall only be deemed to be material for the purposes of this Table if it exceeds 10 per cent of the *firm's* Tier 1 capital.

### **5 Material holdings in credit and financial institutions (Item 8)**

Material holdings comprise:

- (a) where the *firm* holds more than 10 per cent of the equity share capital of the institution, the value of that holding and the amount of any subordinated loans to the institution and the value of holdings in *qualifying capital items* or *qualifying capital instruments* issued by the institution;
- (b) in the case of holdings other than those mentioned in (a) above, the value of holdings of equity share capital in, and the amount of subordinated loans made to, such institutions and the value of holdings in *qualifying capital items* or *qualifying capital instruments* issued by such institutions to the extent that the total of such holdings and subordinated loans exceeds 10 per cent of the *firm's own funds* calculated before the deduction of item 8.

### **6 Long term qualifying subordinated loans (Item 11)**

Loans having the characteristics prescribed by *rule 5.2.5(1)* may be included in item 11, subject to the limits set out in paragraph (1) above.

### **7 Qualifying arrangements (Item 13)**

A *firm* may only include a *qualifying undertaking* or other arrangement in item 13 if it is a *qualifying capital instrument* or a *qualifying capital*.

### **8 Interim profits**

*Non-trading book* interim profits may only be included in Tier 1 of the calculation if they have been independently verified by the *firm's* external auditors.

For this purpose, the external auditor should normally undertake at least the following:

- (a) satisfy himself that the figures forming the basis of the interim profits have been properly extracted from the underlying accounting records;

- (b) review the accounting policies used in calculating the interim profits so as to obtain comfort that they are consistent with those normally adopted by the *firm* in drawing up its annual financial statements;
- (c) perform analytical review procedures on the results to date, including comparisons of actual performance to date with budget and with the results of prior periods;
- (d) discuss with management the overall performance and financial position of the *firm*;
- (e) obtain adequate comfort that the implications of current and prospective litigation, all known claims and commitments, changes in business activities and provisions for bad and doubtful debts have been properly taken into account in arriving at the interim profits; and
- (f) follow up problem areas of which the auditors are already aware in the course of auditing the *firm*'s financial statements.

A *firm* wishing to include interim profits in Tier 1 capital in a *financial return* should submit to the *FSA* with the *financial return* a verification report signed by its external auditor which states whether the interim results are fairly stated.

Profits on the sale of capital items or arising from other activities which are not directly related to the *investment business* of the *firm* may also be included within the calculation of *liquid capital* if they can be separately verified by the *firm*'s auditors. In such a case, such profits can form part of the *firm*'s Tier 1 capital as audited profits.

### **9 Short term *qualifying subordinated loans* (Item 15)**

Loans having the characteristics prescribed by *rule 5.2.5(3)* may be included in item 15 subject to the limits set out in paragraph (1) above. Tier 2 capital which exceeds the ratios prescribed by paragraph (1)(a) and (c) may be included in item 15 subject to paragraph (1) above.

### **10 Illiquid assets (Item 14)**

Illiquid assets comprise:

- (a) tangible fixed assets;

#### **Note**

In respect of tangible fixed assets purchased under finance leases the amount to be deducted as an illiquid asset shall be limited to the excess of the asset over the amount of the related liability shown on the balance sheet.

- (b) holdings in, including subordinated loans to, *credit* or *financial institutions* which may be included in the *own funds* of such *institutions* unless they have been deducted under item 8;
- (c) any *investment* in undertakings other than *credit institutions* and other *financial institutions* where such *investments* are not readily realisable;
- (d) any deficiency in net assets of a *subsidiary*;
- (e) deposits not available for repayment within 90 days (except for

payments in connection with margined futures or options contracts);

**Note**

Where cash is placed on deposit with a maturity of more than 90 days but is repayable on demand subject to the payment of a penalty, then this is not required to be deducted as an illiquid asset but a deduction is required for the amount of the penalty.

- (f) loans, other debtors and accruals not falling due to be repaid within 90 days or which are more than one month overdue by reference to the contractual payment date;
- (g) physical stocks (except where subject to the *position risk requirement* as set out in Table 5.2.3(5)(b); and
- (h) prepayments to the extent that the period of prepayment exceeds thirteen weeks.

**11 *Qualifying property* (Item 17)**

This item comprises the qualifying amount calculated in accordance with *rule* 5.2.6(1).

7.4 APPLICATION OF CERTAIN RULES IN CHAPTER 5 OF IPRU(INV)

7.4.1 R (1) The following *rules* in *IPRU(INV)5* apply to a *firm* in respect of *qualifying subordinated loans, qualifying property, qualifying undertakings, records and consolidated supervision*:

(a) *rules* 5.2.5(1) to 5.2.5(7);

(b) *rules* 5.2.6(1) to 5.2.6(3);

(c) *rules* 5.3.1(1) and 5.3.1(4) to 5.3.1(6); and

(d) *rules* 5.7.1(1), 5.7.1(2)(b) and (c), 5.7.1(3) and 5.7.1(4).

(2) In the applicable *rules* in *IPRU(INV) 5* references to:

(a) table 5.2.2(1) are to be construed as references to Table 7.3.1R;

(b) *rule* 5.2.3(1) are to be construed as references to *rule* 7.2.1R;

(c) *rule* 5.3.1(3) are to be construed as references to *rule* 7.6.2R;

(d) *rule* 5.2.1(2) are to be construed as references to *rule* 7.2.1R(1);

(e) *rule* 5.5.1(1) are to be construed as references to *rule* 7.5.2R; and

(f) *liquid capital requirements* are to be construed as references to the liquid capital resource requirement calculated in accordance with *rule* 7.2.3R.

7.4.2 R (1) *Rules* 5.2.7(2) to 5.2.7(4) in *IPRU(INV) 5* apply to a *UCITS investment firm* in regard to *large exposures* in respect of its *designated investment business* other than when undertaking *scheme management activity*.

(2) References in the applicable *IPRU(INV) 5* *rules* to *firm* or to *ISD firm* are to be construed as references to a *UCITS investment firm*.

7.5 FINANCIAL NOTIFICATION

7.5.1 G *Rule* 7.5.2 R applies instead of *rule* 5.5.1(1) (Financial Notification).

7.5.2 R A *UCITS investment firm* must notify the *FSA* in writing as soon as it has reason to believe that any of the following has occurred:

(1) a *counterparty* in a repo or reverse repo transaction has defaulted; or

- (2) the *firm* is in breach of the requirement to maintain *initial capital* equal to or in excess of €125,000; or
- (3) the *firm* is in breach of the *large exposures* limits set out in *rule 5.2.7(3)*.

7.6 RECORDS

7.6.1 G *Rule 7.6.2R* applies instead of *rule 5.3.1(3)* (Records).

7.6.2 R A *firm* must ensure that proper accounting records are kept in English to show and explain the *firm's own account transactions*.

## Annex D

### Amendments to the Conduct of Business sourcebook (COB)

In this Annex, underlining indicates new text.

#### 4 Table Miscellaneous Transitional Rules

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
...					
10	<u>COB 7.1.14</u>	R	<p style="text-align: center;"><u>UCITS management company</u></p> <p><u>COB 7.1.14 R does not take effect in relation to any discretionary management undertaken in accordance with a <i>client agreement</i> entered into before 12 February 2004.</u></p>	<p style="text-align: center;"><u>From 13 February 2004 to 12 February 2007</u></p>	<u>13 February 2004</u>

After *COB 7.1.13R*, insert the following new rule:

UCITS management company

7.1.14 R In addition to *COB 7.1.3R*, a *UCITS management company* which also *manages investments* (other than of *collective investment schemes*) must obtain prior general approval from the *client* before it invests all or part of the *client's* portfolio in the *units* of a *UCITS* it manages.

## Annex E

### Amendments to the Authorisation manual (AUTH)

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 3.17.2 G Applicants seeking to establish a *collective investment scheme* or to act as manager of a *regulated collective investment scheme* should note the *rule* in *CIS 16.5*, which implements article 65 of the *UCITS Directive* and restricts the activities of ~~a manager of an authorised unit trust fund manager of a~~ *collective investment scheme* which is a *UCITS scheme* to the activities stated in that rule.
- 3.17.3 G ~~[Deleted] An applicant which wishes to act as manager of an authorised unit trust which is a UCITS scheme should note the restriction on the activities it may engage in (see CIS 16.5 (Managers of UCITS Schemes)).~~
- 3.17.4 G *A firm* which is subject to the rule in *CIS 16.5* may, ~~however~~ in addition, carry on ‘connected activities’ referred to in *CIS 16.5*, which include management of *PEPs*, *ISAs* and *stakeholder pension schemes*, as long as they are dedicated to investments in unit trusts and *OEICs* for which the *firm* acts as *manager* or *ACD*. The Enquiries and Applications Department (Applications team) would be pleased to discuss any other activities which potential applicants consider may be connected.
- ...
- 5.3.2 G (1) On qualifying for *authorisation*, subject to AUTH 5.3.2G(1A), an *EEA firm* will have *permission* to carry on each permitted activity (see (2) ~~below~~) which is a *regulated activity*:
- (a) through its *UK branch* (if it satisfies the *establishment conditions*); or
  - (b) by providing *crossborder services* into the *United Kingdom* (if

it satisfies the *service conditions*).

(1A) (a) Paragraph (1) does not apply to the activity of *dealing in units in a collective investment scheme* in the *United Kingdom* where:

(i) the *firm* is an *EEA UCITS management company*;

(ii) the *firm* satisfies the *establishment conditions* in *AUTH 5.4.2G*; and

(iii) the *FSA* notifies the *EEA firm* and the *EEA firm's Home State regulator* that the way in which it intends to market a *relevant scheme* in the *United Kingdom* does not comply with the law in force in the *United Kingdom*.

(b) The *FSA's* notice under (1A)(a)(iii) has to be given to the *EEA firm* within two months of receiving the *consent notice (AUTH 5.4.2G(1))* and will be similar to a *warning notice*.

(c) For details of the *FSA's* procedures for the giving of *warning notices* and references to the *Tribunal*, see *DEC 2.2 (Statutory notice procedure: Warning notice and decision notice procedure)* and *DEC 5 (References to the Tribunal, publication and services of notices)*.

...

...

5.5.3 G Before an *EEA firm* exercises an *EEA right* to provide *cross border services* into the *United Kingdom*, the *Act* requires it to satisfy the *service conditions*, as set out in paragraph 14 of Part II of Schedule 3 to the *Act*. These conditions are that:



- (1) the *EEA firm* has given its *Home State regulator* notice of its intention to provide *cross border services* in the *United Kingdom* (a notice of intention);
- (2) if the *EEA firm* is passporting under ~~either~~ the *Investment Services Directive* ~~or~~ the *Insurance Directives*; or the *UCITS Directive*, the *FSA* has received notice (“a regulator’s notice”) from the *EEA firm’s Home State regulator* containing the information prescribed under regulation 3 of the *EEA Passport Rights Regulations* (see *AUTH 5 Annex 2G*); and
- (3) if the *EEA firm* is passporting under the *Insurance Directives*, its *Home State regulator* has informed the *EEA firm* that it has sent the regulator's notice to the *FSA*.

...

## 5 Annex 1

### G Establishment of a branch: Contents of Consent Notice

#### 1 Table

Type of firm	Para n.	Contents of consent notice (Regulation 2)
<i>Investment firm</i>	...	...
<u><i>EEA UCITS management company</i></u>	(2A)(a)	<u>a statement that the <i>firm</i> is an <i>EEA UCITS management company</i>;</u>
	(b)	<u>the <i>requisite details of the branch</i>; and</u>
	(c)	<u>details of any compensation scheme which is intended to protect the <i>branch’s</i> investors.</u>
<i>Credit institution</i>	...	...

...

## 5 Annex 2

## G Provision of services: Contents of regulator's notice

## 1 Table

Type of firm	Para n.	Contents of <del>consent notice</del> <u>regulator's notice</u> (Regulation <del>2</del> 3)
<i>Investment firm</i>	...	...
<u><i>EEA UCITS management company</i></u>	(2A)(a)	a statement that the <i>firm</i> is an <u><i>EEA UCITS management company</i></u> ;
	(b)	<u>particulars of the programme of operations to be carried on in the <i>United Kingdom</i> including a description of the particular activities which the <i>firm</i> is seeking to carry on in the <i>United Kingdom</i> in the exercise of an <i>EEA right</i>; and</u>
	(c)	<u>details of any compensation scheme which is intended to protect investors.</u>
<i>Insurance undertaking</i>	...	...

## Annex F

### Amendments to the Supervision Manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Transitional provisions

#### 2 Table

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
9	<i>SUP</i> 12.5.5R  <i>SUP</i> 12.5.7R	R	Appointed representatives  ...	...	...
<u>9A</u>	<u><i>SUP</i></u> <u>15.8.4</u>	<u>R</u>	<u>Notification of Delegation</u>  <u>(1) Subject to (2), <i>SUP</i> 15.8.4 R does not apply to a <i>UCITS management company</i> which became <i>authorised</i> before 13 February 2004.</u>  <u>(2) Paragraph (1) does not apply in relation to any <i>UK firm</i> which exercises an <i>EEA right</i> under the <i>UCITS Directive</i> (in which event the rule applies in relation to acts of delegation occurring on or after the date on which the firm begins to exercise such rights).</u>	<u>From 13 February 2004 to 13 February 2007</u>	<u>13 February 2004</u>
...					

...

3.1.2 RTable: Applicable sections (see SUP 3.1.1R)

(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
(7) <i>Investment management firm, personal investment firm (other than a small personal investment firm), UCITS management company, or securities and futures firm (Note 3)</i>	SUP 3.1 – SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8 – SUP 3.10

...

3.1.10 G Table: Other relevant sections of the Handbook (see SUP 3.1.9G)

<i>Investment management firm, personal investment firm, securities and futures firm, UCITS management company</i>	IPRU(INV)
--	-----------

...

3.9.5 R Table: Auditor's report

...	
(6)	the relevant financial reporting statement has been properly prepared in accordance with the <i>FSA's rules</i> , the relevant financial reporting statement being, in the case of:  ... <u>(d) a UCITS management company: the annual financial return (see SUP 16.7.68R);</u>
...	
(10)	the <i>firm</i> (not being a <i>corporate finance advisory firm</i> or an <i>OPS firm</i> ) has calculated its expenditure requirement in accordance with the relevant <i>rules</i> for the forthcoming year, the relevant <i>rules</i> being, in the case of:

...	...
...	<u>(f) a UCITS management company: IPRU(INV) 7.2.3R and 7.2.4R;</u>
(13)	the <i>firm</i> has kept proper accounting records in accordance with the <i>rules</i> throughout its financial year, the relevant <i>rules</i> being, in the case of:
...	...
...	<u>(e) a UCITS management company: IPRU (INV) 7.4.1R;</u>

...

3.9.7 R An auditor of a *firm* must submit a report under SUP 3.9.4R(1) after each *accounting reference date* of the *firm* and so has to be received by the FSA within:

...

(2) in the case of an auditor of a *personal investment firm*, a UCITS management company or an *investment management firm*, four months of the *firm's accounting reference date*.

...

3.10.5 R Table: Client assets report

whether in the auditor's opinion	
...	...
(3)	In the case of an <i>investment management firm</i> , <i>personal investment firm</i> , <u>a UCITS management company</u> or <i>securities and futures firm</i>
...	...
...	...

...

13.3.5 G (1) If a *UK firm* has given the FSA a notice of intention in the required form, then:

(a) if the *UK firm's EEA right* derives from the *Banking Consolidation Directive*, ~~or~~ the *Investment Services Directive* or the UCITS

Directive, the FSA will give the *Host State Regulator* a *Consent Notice* within three months unless it has reason to doubt the adequacy of a *UK firm's* resources or its administrative structure;

...

...

13.3.7 G ...

- (2) If the *FSA* decides to refuse to give a *consent notice*, then paragraph 19(12) of Part III of Schedule 3 to the *Act* requires the *FSA* to give the *UK firm* a *decision notice* within three months of the date on which it received the *UK firm's* notice of intention (two months in the case of a *UK firm* which is a *UCITS management company*). The *UK firm* may refer the matter to the *Tribunal*.

...

...

13.4.3 G (1) If the *EEA right* is derived from the *Investment Services Directive*, the *Banking Consolidation Directive* or the *UCITS Directive*, the *FSA* has one month to notify the relevant *Host State regulator*;

...

...

13.4.4 G If a *UK firm* has given the *FSA* a notice of intention in the required form, then:

- (1) if the *UK firm's EEA right* derives from the *Investment Services Directive*, ~~or the *Banking Consolidation Directive*~~; or the *UCITS Directive*, paragraph 20(3) of Part III of schedule 3 to the *Act* requires the *FSA* to send a copy of the notice of intention to the *Host State Regulator* within one month of receipt; or

...

...

13.4.6 G (1) If the *UK firm* is passporting under the *Investment Services Directive* or *UCITS Directive*, then when the *Host State regulator* receives the notice of intention, it should inform the *UK firm* of any *applicable provisions*.

...

...

Firms passporting under the Investment Services Directive, the Banking Consolidation Directive and the UCITS Directive

13.6.4 G If a *UK firm* has exercised an *EEA right* under the *Investment Services Directive*, ~~or the *Banking Consolidation Directive* or the *UCITS Directive*~~, and established a *branch* in another *EEA State*, regulation 11(1) states that the *UK firm* must not make a change in the *requisite details* of the *branch* (see *SUP 13 Ann 1R*), unless it has satisfied the requirements of regulation 11(2), or, where the changes arise from circumstances beyond the *UK firm's* control, regulation 11(3)(see *SUP 13.6.10G*).

...

Firms passporting under the Investment Services Directive and the UCITS Directive

13.7.3 G If a *UK firm* is passporting under the *Investment Services Directive* or the *UCITS Directive*, regulation 12(1) states that the *UK firm* must not make a change in its programme of operations, or the activities to be carried on under its *EEA right*, unless the relevant requirements in regulation 12(2) have been complied with. These requirements are:

...

...

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Requisite Details: branches

1 Table R

	Type of firm	Requisite details (see notes 1&2)	
<u>1</u>	<i>Credit Institution</i> or <i>Investment firm</i>	(a)	particulars of the programme of operations carried on, or to be carried on, from the <i>branch</i> , including a description of the particular <i>EEA</i> activities to be carried on, and of the structural organisation of the <i>branch</i> ;
		(b)	the address in the <i>EEA State</i> in which the <i>branch</i> is, or is to be, established from which information about the business may be obtained; and
		(c)	the name of the managers of the <i>branch</i> .

<u>2</u>	<u>UCITS management company</u>		The information required under 1 above, plus: <u>the EEA State within the territory of which the UCITS management company plans to establish a branch;</u> -
<u>3</u>	<u>Insurance undertaking</u>	...	...

...

13 Ann 3R

Requisite and relevant details: Cross Border Services

1 Table R

	Type of firm	Requisite / relevant details	
<u>1</u>	<i>Investment firm</i>	Requisite Details	
		(a)	details of the programme of operations, stating in particular the service or services of the <i>UK firm</i> intends to provide.
<u>2</u>	<u>UCITS management company</u>	(a)	The information required under 1 above, plus: <u>the EEA State within the territory of which the UCITS management company plans to establish a branch;</u> -
<u>3</u>	<u>Insurance undertaking</u>	...	...

...

Firms passporting under the Investment Services Directive, the Banking Consolidation Directive and the UCITS Directive

14.2.2 G (1) Where an *incoming EEA firm*, passporting under the *Investment Services Directive*, ~~or Banking Consolidation Directive~~ or the UCITS Directive, has established a *branch* in the *United Kingdom*, regulation 4 states that it must not make a change in the *requisite details* of the



branch (see AUTH 5 Ann 1G) unless it has complied with the relevant requirements.

...

- 14.3.1 G Where an *incoming EEA firm* passporting under the *Investment Services Directive*, *UCITS Directive* or *Insurance Directives* is exercising an *EEA right* and is providing *cross border services* into the *United Kingdom*, the *EEA Passport Rights Regulations* govern any changes to the details of those services. Where an *incoming EEA firm* has complied with the relevant requirements in the *EEA Passport Rights Regulations*, then the *firm's permission* given under Schedule 3 to the *Act* is to be treated as varied accordingly.

Firms passporting under the Investment Services Directive and UCITS Directive

- 14.3.2 G Where an *incoming EEA firm* passporting under the *Investment Services Directives* or *UCITS Directive* is providing *cross border services* into the *United Kingdom*, it must not make a change in the details referred to in regulation 5(1) (see AUTH 5 Ann 2G) unless it has complied with the relevant requirements in regulation 5(3).

...

After SUP 15.8.3R, insert the following new section:

Delegation by UCITS management companies

- 15.8.4 R A UCITS management company must notify the FSA as soon as reasonably practicable if it delegates any of its functions to a third party.
- 15.8.5 G A UCITS management company which delegates any of its functions to a third party must, as well as complying with SUP 15.8.4 R, comply with the requirements in CIS 7.6.1 R (2) or CIS 7.10.4 R(1) as appropriate.

...

16.1.3 R Table: application of different sections of SUP 16

(1) Section(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
...	...	...
SUP 16.7	<i>ELMI</i>	SUP 16.7.64.R to SUP 16.7.66R..
	<u>UCITS management company</u>	<u>SUP 16.7.67R to SUP 16.7.72R</u>
...	...	...

...

16.7.5 G Table Applicable rules and guidance on financial reports (see SUP 16.7.1G)

Firm category	Applicable rules and guidance
...	...
<i>ELMI</i>	SUP 16.7.64R–SUP 16.7.66R
<u>UCITS Management Company</u>	<u>SUP 16.7.67R-SUP 16.7.72R</u>
....	

...

After SUP 16.7.66R, insert the following new section:

UCITS Management Companies

16.7.67 R A *UCITS management company* must submit reports to the *FSA* in accordance with SUP 16.7.68R.

16.7.68 R Table: Financial reports from a *UCITS management company* (see *SUP 16.7.67R*)

Report	Frequency	Due date
Annual Financial Return (Note 1)	Annually	4 months after the <i>firm's</i> accounting reference date
Annual accounts (Note 1)	Annually	4 months after the <i>firm's</i> accounting reference date
Annual solvency statement (only for individuals in partnership) (Note 2)	Annually	At the same time as the Annual Financial Return
Quarterly Financial Return (Note 3)	Quarterly	1 month after quarter end

Note 1: The Annual Financial Return and the annual accounts of a *firm* must together give a true and fair view of the state of affairs of the *firm* (or in the case of a *sole trader*, of his *regulated activities*) and of the *firm's* profit or loss.

Note 2: The annual solvency statement is a statement from each *partner* in the following form: 'I certify that I have sufficient assets to cover my personal liabilities.'

Note 3 A *firm* must therefore prepare four Quarterly Financial Returns each year. One Quarterly Financial Return must be prepared to the same date as the Annual Financial Return (but submitted earlier). Quarterly Financial Returns are not cumulative, and must relate only to the period concerned. A *firm* may need to prepare more frequent accounts, including financial resources statements, for its own internal use to ensure that it complies at all times with the *rules* in *IPRU(INV)*.

16.7.69 R A *UCITS management company* must submit the required reports in accordance with, and in the same format as, the forms contained in *SUP 16 Ann 16R*, and according to the requirements contained in section 3 of that annex.

16.7.70 G The *FSA* expects the annual accounts to be submitted together with the auditor's report required by *SUP 3.9.4R*.

#### Reporting periods

16.7.71 R The period covered by:

- (1) quarterly financial returns may not exceed three *months*; and
- (2) annual financial returns may not exceed twelve *months*.

Timely reporting

16.7. 72 R A *UCITS management company* must notify the *FSA* in writing as soon as it has reason to believe it will be unable to submit an annual or quarterly financial return by the dates specified in *SUP 16.7.68R*. Such notice must specify why it cannot submit the report to the *FSA* on time and give the date by which it will submit the report to the *FSA*.

...

After *SUP 16 Ann 15R*, insert the following new Annex:

16 Ann 16R: UCITS management companies reporting forms and requirements applying to their completion

1. Annual Financial Return
2. Quarterly Financial Return
3. Requirements applying to the completion of annual and quarterly financial returns

**Financial Return**  
**UCITS Management Companies**  
**Annual Financial Return**

For the year ended \_\_\_\_\_

Name of Firm \_\_\_\_\_

FSA firm reference number \_\_\_\_\_

Date of Audit Opinion \_\_\_\_\_

For FSA use

Date received \_\_\_\_\_

Entered \_\_\_\_\_

Completed \_\_\_\_\_

For the period from \_\_\_\_\_ (date) to \_\_\_\_\_ (date)

(Accounting Reference Date)

£000

**Dealing Profit/(Loss)**

Dealing profit or (loss) – long term investments \_\_\_\_\_ (1)

Charges on unit trust sales/redemptions \_\_\_\_\_ (2)

Total dealing profit or (loss) [(1+2)] ===== (3)

**Revenue**

Commission \_\_\_\_\_ (4)

Investment management fees \_\_\_\_\_ (5)

UCITS management fees \_\_\_\_\_ (6)

Other revenue \_\_\_\_\_ (7)

Total revenue [(4) to (7)] ===== (8)

**Expenditure**

Commissions and fees \_\_\_\_\_ (9)

Exceptional items (specify below) \_\_\_\_\_ (10)

Other expenditure \_\_\_\_\_ (11)

Total expenditure (to UAFS5) [(9) to (11)] ===== (12)

Profit or (loss) on ordinary activities before taxation [(3)+(8)-(12)] \_\_\_\_\_ (13)

Taxation \_\_\_\_\_ (14)

Extraordinary items net of attributable taxation \_\_\_\_\_ (15)

Profit or (loss) after taxation and extraordinary items [(13)-(14 + 15)] ===== (16)

Appropriations \_\_\_\_\_ (17)

Retained profit or (loss) for the period [(16)-(17)] ===== (18)

**Details of exceptional items of expenditure**

**Balance Sheet - UCITS Management Companies**

**UAFS 2**

---



**Financial Resources**

*Note: The references in brackets are to the items of capital IPRU(INV) Table 7.3.1 Part 1*

	£000	£000
<b><u>Tier 1</u></b>		
Paid up share capital (excluding preference shares) <i>(Item 1)</i>		_____ (34)
Share premium account <i>(Item 2)</i>		_____ (35)
Audited reserves <i>(Item 3)</i>		_____ (36)
Non-cumulative preference shares <i>(Item 4)</i>		_____ (37)
Less: Investment in own shares <i>(Item 5)</i>	_____	
Intangible assets <i>(Item 6)</i>	_____	
Material current year losses <i>(Item 7)</i>	_____	
Material holdings in credit and financial institutions <i>(Item 8)</i>	_____	_____ (38)
<b>Initial capital</b> [34 to 37-38]		===== (39)
<b><u>Tier 2</u></b>		
Revaluation reserves <i>(Item 9)</i>		_____ (40)
Fixed term cumulative preference share capital <i>(Item 10)</i>		_____ (41)
Long term Qualifying Subordinated Loans <i>(Item 11)</i>		_____ (42)
Other cumulative preference share capital and debt capital <i>(Item 12)</i>		_____ (43)
Qualifying arrangements <i>(Item 13)</i>		_____ (44)
<b>Own funds</b> [39+40 to 44]		===== (45)
<b><u>Tier 3</u></b>		
Less Illiquid assets <i>(Item 14)</i>		===== (46)
<b>Financial resources</b> [45-46]		===== (47)
Short term Qualifying Subordinated Loans and excess Tier 2 capital <i>(Item 15)</i>		_____ (48)
Qualifying Property <i>(Item 17)</i>		_____ (49)
<b>Liquid capital</b> [47+48+49]		===== (50)



---

**Financial Resources Requirements for all UCITS Management Companies**

	£000	£000
<b><u>Test 1</u></b>		
<b>Initial Capital Test</b>		
Initial capital ( <i>line 41</i> )		_____ (51)
Initial capital requirement (€ 125,000)		( _____ ) (52)
		_____
<b>Surplus/ Deficit of Initial Capital</b> (51-52)		===== (53)
 <b><u>Test 2</u></b>		
<b>Financial Resources Test</b>		
Financial resources ( <i>line 47</i> )		_____ (54)
Less the higher of :		
€ 125,000	_____	(55)
Plus : Funds Under Management over € 250m X 0.02%	_____	(56)
Total (55+56 is subject to a maximum of € 10m)		( _____ ) (57)
and		
13/52 of annual audited fixed expenditure ( <i>IPRU(INV) Rule 7.2.2(2) -form UAFS5</i> )		( _____ ) (58)
<b>Surplus/Deficit of financial resources</b> [54-57 or 58]		===== (59)
 <b><u>Test 3</u></b> (applicable to UCITS Investment Firms only )		
<b>Liquid Capital Resource Test</b>		
Liquid capital ( <i>line 50</i> )		_____ (60)
13/52 of Annual Audited Fixed Expenditure ( <i>IPRU(INV) Rule 7.2.3 -form UAFS5</i> )		_____ (61)
Position Risk Requirement ( <i>IPRU(INV) Table 5.2.3(5)(b)</i> )	_____	(62)
Counterparty Risk Requirement ( <i>IPRU(INV) Table 5.2.3(5)(c)</i> )	_____	(63)
Foreign Exchange Requirement ( <i>IPRU(INV) Table 5.2.3(5)(d)</i> )	_____	(64)
Other Assets Requirement ( <i>IPRU(INV) Table 5.2.3(5)(e)</i> )	_____	(65)
Liquid Capital Resource Requirement [61 to 65]		( _____ ) (66)
		=====
<b>Surplus/Deficit of liquid capital</b> [60-66]		===== (67)

**Calculation of financial resources requirement for forthcoming year-UCITS Management Companies**

**UAFS 5**

	£000	£000
<b>Annual Audited Fixed Expenditure</b>		
Total Expenditure (per profit and loss account UAFS1 line (12))		_____
Less: Staff bonus, except to the extent that they are guaranteed	(_____)	
Employees' and Directors' shares in profits, except to the extent that they are guaranteed	(_____)	
Other appropriations of profits	(_____)	
Allowable commission and fees	(_____)	
Interest charges in respect of borrowings made to finance the acquisition of the Firm's Readily Realisable Investments	(_____)	
Interest paid to customers on client money	(_____)	
Interest paid to counterparties	(_____)	
Fees, brokerage and other charges paid to clearing houses, exchanges and intermediate brokers for the purposes of executing, registering or clearing transactions	(_____)	
Foreign exchange losses	(_____)	
Other variable expenditure	(_____)	
 Audited Fixed Expenditure		 =====
 Annual Audited Fixed Expenditure		 =====
(pro-rated where relevant to annual amount)(IPRU(INV)7.2.4(2))		
 Expenditure Based Requirement (13/52 of Annual Audited Fixed Expenditure) (68)		 =====

***Note:** The annual audited fixed expenditure calculated above becomes effective from the date on which this Annual Financial Return is approved by the auditor. At all times throughout the period from this date until the next Annual Financial Return is approved, the Firm's Financial Resources must satisfy its Financial Resources Requirement incorporating the above Requirement.*

(Not subject to audit)

£000

**1. FUNDS UNDER MANAGEMENT**Value of total funds under management  
at Accounting Reference Date

\_\_\_\_\_ (69)

**2. CLIENT MONEY AND ASSETS**During the period, has the Firm  
held Client Money? \*\*

\*YES/NO (70)

During the period, has the Firm  
held customers' assets? \*\*

\*YES/NO (71)

**3. LARGE EXPOSURES** (*UCITS Investment Firms only*)

Provide details of all Large Exposures outstanding at the end of the period

(72)

**Counterparty  
Item****Value of Exposure****Percentage of Own Funds****Nature of***(e.g. Accrued  
fees, billed  
fees,  
settlement  
balance etc)**\*Delete whichever is not applicable**\*\*Consider by reference to Part IV Permission Statement*

This Annual Financial Return has been properly prepared in accordance with the rules,  
and was approved by the Firm on .....(date).

It is accompanied by the Annual Accounts and the report of the auditor to the FSA as required by the rules.

**SIGNATURE AND DECLARATION**

Knowingly or recklessly giving the FSA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). It should not be assumed that information is known to the FSA merely because it is in the public domain or has previously been disclosed to the FSA or another regulatory body.

I confirm that the information in this form is accurate and complete to the best of my knowledge and belief.

Signed on behalf of the Firm by:

.....(authorised signatory).....(date)

.....(authorised signatory).....(date)

# Financial Return

## UCITS Management Companies

### Quarterly Financial Return

For the quarter ended \_\_\_\_\_

Name of Firm \_\_\_\_\_

FSA firm reference number \_\_\_\_\_

For FSA use

Date received \_\_\_\_\_

Entered \_\_\_\_\_

Completed \_\_\_\_\_

For the period from \_\_\_\_\_ (date) to \_\_\_\_\_ (date)

£000

**Dealing Profit/(Loss)**

Dealing profit or (loss) – long term investments	_____	(1)
Charges on unit trust sales/redemptions	_____	(2)
Total dealing profit or (loss) [(1)+(2)]	=====	(3)

**Revenue**

Commission	_____	(4)
Investment management fees	_____	(5)
UCITS management fees	_____	(6)
Other revenue	_____	(7)
Total revenue [(4) to (7)]	=====	(8)

**Expenditure**

Commissions and fees	_____	(9)
Exceptional items (specify below)	_____	(10)
Other expenditure	_____	(11)
Total expenditure [(9) to (11)]	=====	(12)
Profit or (loss) on ordinary activities before taxation [(3)+(8)-(12)]	_____	(13)
Taxation	_____	(14)
Extraordinary items net of attributable taxation	_____	(15)
Profit or (loss) after taxation and extraordinary items [(13)-(14)+(15)]	=====	(16)
Appropriations	_____	(17)
Retained profit or (loss) for the period [(16)-(17)]	=====	(18)

**Details of exceptional items of expenditure**

As at \_\_\_\_\_ (Quarter End Date)

£000

**Fixed Assets**

Intangible assets	_____	(19)
Tangible assets	_____	(20)
Investments	_____	(21)
Total fixed assets [(19) to (21)]	=====	(22)

**Current Assets**

Investments	_____	(23)
Debtors	_____	(24)
Bank and cash balances	_____	(25)
Total current assets [(23) to (25)]	=====	(26)

**Creditors: Amounts falling due within One Year**

Net current assets (liabilities [(26)-(27)])	=====	(28)
--	-------	------

Total assets less current liabilities [(22)+(28)]	=====	(29)
---	-------	------

**Creditors: Amounts falling due after more than One year**

=====	(30)
-------	------

**Provisions for Liabilities and Charges**

Total assets less total liabilities [(29)-(30)-(31)]	=====	(32)
--	-------	------

**Capital and Reserves**

(Indicate constituent items from UQFS 3)

=====
-------

**Off Balance Sheet Items (detailed below with values)**

(33)

--

**Financial Resources**

*Note: The references in brackets are to the items of capital IPRU(INV) Table 7.3.1 Part 1*

	£000	£000	
<b><u>Tier 1</u></b>			
Paid up share capital (excluding preference shares) (Item 1)		_____	(34)
Share premium account (Item 2)		_____	(35)
Audited reserves (Item 3)		_____	(36)
Non-cumulative preference shares (Item 4)		_____	(37)
Less: Investment in own shares (Item 5)	_____		
Intangible assets (Item 6)	_____		
Material current year losses (Item 7)	_____		
Material holdings in credit and financial institutions (Item 8)	_____	_____	(38)
<b>Initial capital</b> [34 to 37-38]		=====	(39)
<b><u>Tier 2</u></b>			
Revaluation reserves (Item 9)		_____	(40)
Fixed term cumulative preference share capital (Item 10)		_____	(41)
Long term qualifying subordinated loans (Item 11)		_____	(42)
Other cumulative preference share capital and debt capital (Item 12)		_____	(43)
Qualifying arrangements (Item 13)		_____	(44)
<b>Own funds</b> [39+40 to 44]		=====	(45)
<b><u>Tier 3</u></b>			
Less illiquid assets (Item 14)		=====	(46)
<b>Financial resources</b> [45-46]		=====	(47)
Short term Qualifying Subordinated Loans and excess Tier 2 capital (Item 15)		_____	(48)
Qualifying Property (Item 17)		_____	(49)
<b>Liquid capital</b> [47+48+49]		=====	(50)



**Financial Resources Requirements for all UCITS Management Companies**

	£000	£000	
<b>Test 1</b>			
<b>Initial Capital Test</b>			
Initial capital ( <i>line 39</i> )		_____	(51)
Initial capital requirement (€ 125,000)		(_____)	(52)
		_____	
<b>Surplus/ Deficit of Initial Capital</b> (51-52)		=====	(53)
<b>Test 2</b>			
<b>Financial Resources Test</b>			
Financial resources ( <i>line 47</i> )		=====	(54)
Less the higher of :			
€ 125,000	_____		(55)
Plus : Funds Under Management over €250m X 0.02%	_____		(56)
Total (55+56 is subject to a maximum of € 10m )		(_____)	(57)
and			
13/52 of annual audited fixed expenditure ( <i>IPRU(INV) Rule 7.2.2(2) -form UAFS 5</i> )		(_____)	(58)
<b>Surplus/Deficit of financial resources</b> [54-57 or 58]		=====	(59)
<b><u>Test 3</u></b> (applicable to UCITS Investment Firms only )			
<b>Liquid Capital Resource Test</b>			
Liquid capital ( <i>line 50</i> )		_____	(60)
13/52 of Annual Audited Fixed Expenditure( <i>IPRU(INV) Rule 7.2.3 -form UAFS 5</i> )		_____	(61)
Position Risk Requirement ( <i>IPRU(INV) Table 5.2.3(5)(b)</i> )	_____		(62)
Counterparty Risk Requirement ( <i>IPRU(INV) Table 5.2.3(5)(c)</i> )	_____		(63)
Foreign Exchange Requirement ( <i>IPRU(INV) Table 5.2.3(5)(d)</i> )	_____		(64)
Other Assets Requirement ( <i>IPRU(INV) Table 5.2.3(5)(e)</i> )	_____		(65)
Liquid Capital Resource Requirement [61 to 65]		(_____)	(66)
		=====	
<b>Surplus/Deficit of liquid capital</b> [60-66]		=====	(67)

£000

**1. FUNDS UNDER MANAGEMENT**

Value of total funds under management  
at Quarter End Date

\_\_\_\_\_ (68)

**2. CLIENT MONEY AND ASSETS**

During the period, has the Firm  
held Client Money?\*

\*YES/NO (69)

During the period, has the Firm  
held customers' assets?\*

\*YES/NO (71)

**3. LARGE EXPOSURES** (*UCITS Investment Firms only*)

Provide details of all Large Exposures outstanding at the end of the period

(72)

**Counterparty  
Item**

**Value of Exposure**

**Percentage of Own Funds**

**Nature of**

*(e.g. Accrued  
fees, billed  
fees,  
settlement  
balance etc)*

\*Delete whichever is not applicable

\*\*Consider by reference to Part IV Permission Statement

- 1. Is the Firm able and will it be able for the foreseeable future, to meet all of its liabilities as they fall due for payment? \*YES/NO
  
- 2. Have the Firm 's Financial Resources been greater than its Financial Resources Requirement throughout the Quarter? \*YES/NO

We confirm that:

- (i) The Firm 's Financial Resources have been properly calculated in accordance with the Financial resources rules.
  
- (ii) All matters (including contingent liabilities, claims and litigation)which might reasonably be expected to have a material effect on the Firm 's financial position at the date of submission of these statements have been declared herewith or notified in writing to the FSA.

**SIGNATURE AND DECLARATION**

Knowingly or recklessly giving the FSA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000).It should not be assumed that information is known to the FSA merely because it is in the public domain or has previously been disclosed to the FSA or another regulatory body.

I confirm that the information in this form is accurate and complete to the best of my knowledge and belief.

Signed .....Date .....  
(Finance Officer or appointed deputy)

Signed .....Date .....  
(Second authorised signatory)

*\*Delete whichever is not applicable*

### Section 3: UCITS management companies: requirements applying to the completion of annual and quarterly financial returns

#### 1 Table

(see SUP 16.7.68R)

- 1.1.1 (1) Financial Returns must be in agreement with the underlying accounting records.
- (2) Accounting policies must be consistent with those adopted in the Annual Accounts and must be consistently applied.
- (3) Information required in the Annual and Quarterly Financial Returns must be prepared in accordance with generally accepted accounting practice.
- (4) Investments (other than investments in *subsidiary* and related *companies*) must be included in the balance sheet at cost or market value (or the *directors*' estimate of them).
- (5) The Financial Returns of an individual (or individuals in partnership or association) must deal only with his *regulated activities* (or, in the case of individuals in *partnership* or association, the business of the *partnership* or association).
- (6) The Financial Return of a *firm* must not give a misleading impression of the *firm*.
- 1.1.2 A Financial Return is likely to give a misleading impression if a *firm* wrongly omits or includes a material item, or presents a material item in the wrong way.

...

**Appendix 1**  
**Prudential categories and sub-categories**

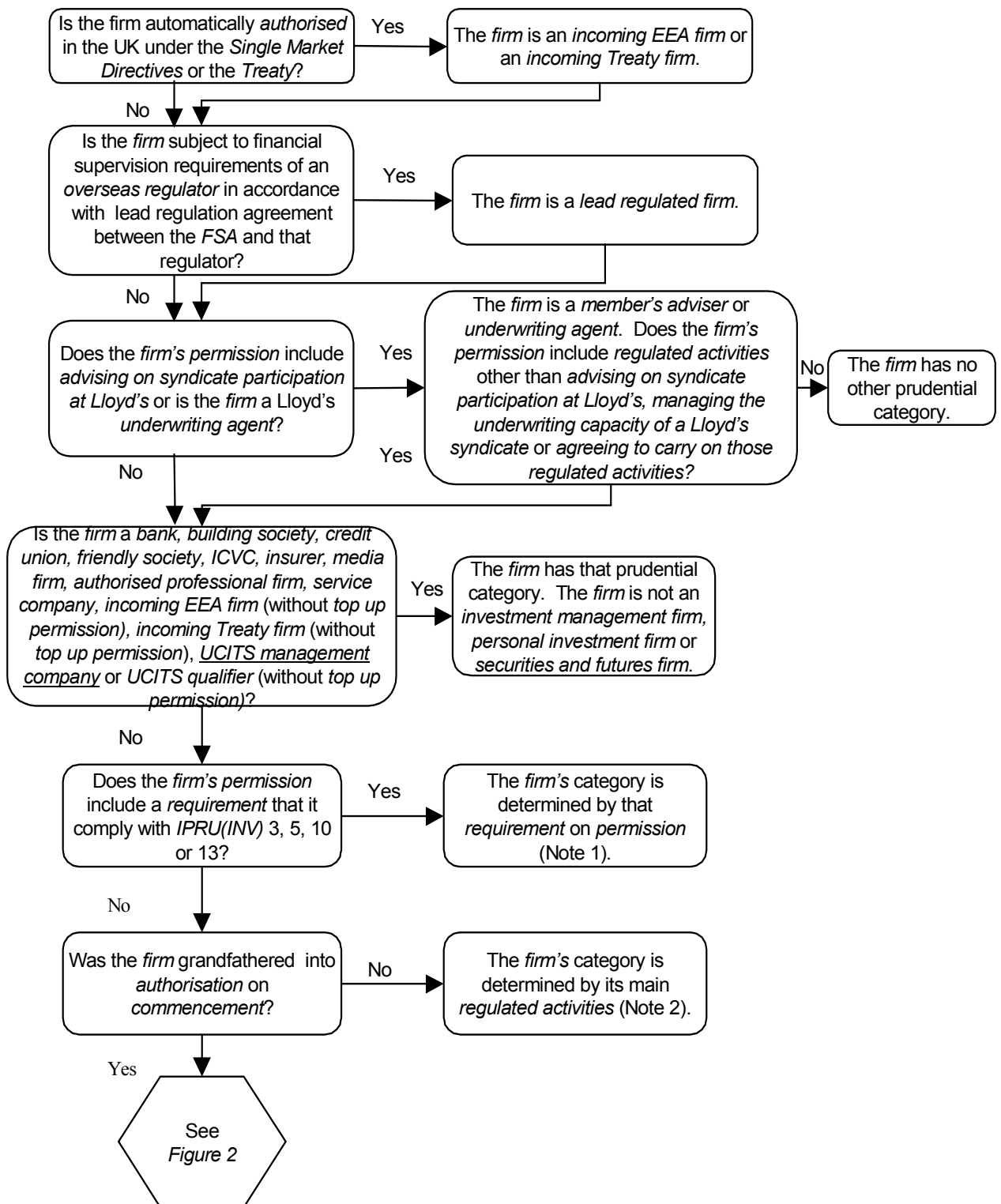
...

**1.3.1 G** Table Prudential categories and sub-categories used in the Interim Prudential sourcebooks and the Supervision manual

<i>Prudential categories</i> (Note 1)	Applicable prudential requirements (Note 2)	Prudential sub- categories
<i>Securities and futures firm*</i>	...	...
...		
<i>Society of Lloyd's*</i>	<i>LLD</i>	
<u><i>UCITS management company*</i></u>	<u><i>IPRU(INV) 1, 5 and 7</i></u>	<u><i>UCITS firm</i></u> <u><i>UCITS investment firm</i></u>
<i>UCITS qualifier</i>	None (unless another prudential category applies)	
...		

## 1.7 Prudential categories and sub-categories

Figure 1: Determination of a firm's prudential category – general



...

**Schedule 2 (Notification requirements)**

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 13.6.5G (1)	Changes to <i>branches</i> ( <i>Firms</i> passporting under the <i>Investment Services Directive</i> , the <i>UCITS Directive</i> , and the <i>Banking Consolidation Directive</i> )	Details of proposed change	Change in circumstances within control of <i>UK firm</i>	Before making change

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 14.2.3G	Change to <i>branch</i> details in circumstances within the control of the <i>firm (firms)</i> passporting under the <i>Investment Services Directive</i> , the <i>UCITS Directive</i> , and <i>Banking Consolidation Directive</i> )	Details of proposed change	Change to <i>branch</i> details	Before making the change

:

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<u>SUP 15.8.4 R</u>	<u>Delegation by UCITS management company</u>	<u>The fact that a function of the UCITS management company has been delegated together with (a) the identity of the party to whom the function has been delegated and (b) the period during which the delegation will apply.</u>	<u>The delegation of a function by a UCITS management company.</u>	<u>As soon as reasonably practicable.</u>



## Annex G

### Amendments to the Decision making manual (DEC)

In this Annex, underlining indicates new text.

DEC 2

- Annex 1 G Statutory notice procedure: Warning notice and decision notice procedure
- 1 Table: List of warning notices and decision notices under the Act (other than Part IV) and certain other enactments

Section of the Act	Description	Handbook reference	Decision maker
...			
385(1)/386(1)	...	...	...
<u>Paragraph 15(6)(c) of Schedule 3 (Note 3)</u>	<u>when the FSA is notifying/ deciding not to withdraw a notice issued to an EEA UCITS management company wishing to deal in units in a collective investment scheme in the United Kingdom and relevant EEA State authorities, that the way in which the EEA UCITS management company intends to market a relevant scheme in the United Kingdom does not comply with UK law.</u>	<u>AUTH 5</u>	<u>Executive procedures</u>
Paragraph 19 (8)/(12) of Schedule 3	...	...	...

## Annex H

### Amendments to the Compensation sourcebook (COMP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.4.1 G *Incoming EEA firms* which are conducting *regulated activities* in the *United Kingdom* under a *BCD<sub>2</sub>* ~~or *ISD*~~ or *UCITS Directive* passport are not required to participate in the *compensation scheme* in relation to those *passported activities*. ...

...  
~~5.2.2 G Where a *claim* is against a *relevant person* which is:~~

~~(1) an *incoming EEA firm* which is a *credit institution* or *ISD investment firm*; or~~

~~(2) an *appointed representative* of (1);~~

~~the categories of *claim* that are *protected claims* are modified in COMP 14.5. This is because the *DGD* and *ICD* provide that compensation may be available under the *firm's Home State* compensation scheme. [deleted]~~

...

5.5.2 R *COMP 5.5.1R* only applies if the *protected investment business* was carried on from:

(1) an *establishment* of the *relevant person* in the *United Kingdom*; or

(2) a *branch* of a *UK firm* which is:

(a) an *ISD investment firm* (including a *credit institution* which is an *ISD investment firm*), or

(b) a *UCITS management company* established in another *EEA State* (but only in relation to *managing investments* (other than of a *collective investment scheme*), *advising on investments* or *safeguarding and administering investments*);

and the *claim* is an *ICD claim*; or

(3) both (1) and (2).

(4)

...

- 6.2.2G            *An incoming EEA firm, which is a credit institution, ~~or~~ an ISD investment firm or a UCITS management company, and its appointed representatives are not relevant persons in relation to the firm's passported activities, unless it has top-up cover (and in the case of a UCITS management company, only in relation to managing investments (other than of a collective investment scheme), advising on investments or safeguarding and administering investments). (See definition of 'participant firm'.)*
- ...
- 14.1.1 R            This chapter applies to the FSCS.
- 14.1.2 R            This chapter also applies to an *incoming EEA firm* which is a *credit institution* or an *ISD investment firm* (or both), or a UCITS management company.
- 14.1.3 G            This chapter provides supplementary *rules and guidance* for an *incoming EEA firm* which is a *credit institution*, ~~or~~ an *ISD investment firm* or UCITS management company. It reflects the implementation of the *Deposit Guarantee Directive*, ~~and~~ *Investors Compensation Directive*, and UCITS Directive. This sourcebook applies in the usual way to an *incoming EEA firm* which is exercising *EEA rights* under the *Insurance Directives*. Such a *firm* is not affected by the *Deposit Guarantee Directive*, ~~or~~ the *Investors Compensation Directive* or the UCITS Directive.
- 14.1.4 G            An *incoming EEA firm*, which is a *credit institution*, ~~or~~ an *ISD investment firm* or UCITS management company is not a 'participant firm' in relation to its passported activities unless it 'tops up' into the compensation scheme (for a UCITS management company, this is only for certain passported activities). This reflects section 213 (10) of the *Act* (The compensation scheme) and regulation 2 of the *Electing Participants Regulations* (Persons not to be regarded as relevant persons). If an *incoming EEA firm* also carries on non-passported activities (or, for a UCITS management company, certain passported activities) for which the *compensation scheme* provides cover, it will be a *participant firm* in relation to those activities and will be covered by the *compensation scheme* for those activities in the usual way.
- 14.1.5 G            In relation to an *incoming EEA firm's passported activities*, its *Home State* compensation scheme must provide compensation cover in respect of business within the scope of the *Deposit Guarantee Directive*, ~~and~~ *Investors Compensation Directive* and article 5(3) of the UCITS Directive, whether that business is carried on from a *UK branch* or on a *cross border services* basis. (For a UCITS management company, this is only for certain passported activities.)

...

14.2.3 G A notice under *COMP* 14.2.1R should include details confirming that the *incoming EEA firm* falls within a prescribed category. In summary:

- (1) the *firm* must be a *credit institution*, ~~or~~ an *ISD investment firm* or a UCITS management company;

...

## Annex I

### Amendments to the Collective Investment Schemes sourcebook (CIS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Table Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
...					
20	<u>CIS 16.5.1 (4) to (6)</u>	R	<p><u>A UCITS management company may not carry on any of the activities specified in CIS 16.5.1(4) to (6) unless it is a UCITS investment firm:</u></p> <p><u>(a) whose permission to carry on any such activity was given before 13 February 2004; or</u></p> <p><u>(b) which complies with Chapter 7 of IPRU(INV).</u></p>	From <u>13 February 2004 to 12 February 2007</u>	<u>13 February 2004</u>
21	<u>CIS 16.5.1 (4) to (6)</u>	G	<p><u>A UK firm will not be able to act as such and exercise an EEA right under the UCITS Directive unless it complies with Chapter 7 of IPRU(INV).</u></p>		
22	<u>CIS 7.6.1(4) and (5)</u>  <u>CIS 7.10.4 (1), (5) and (6)</u>	R	<p><u>(1) Subject to (2), in relation to a UCITS management company which became authorised before 13 February 2004, CIS 7.6.1(4) and (5) and CIS 7.10.4(1), (5) and (6) have effect as they applied before 12 February 2004.</u></p> <p><u>(2) Paragraph (1) does not apply in relation to any UK firm which exercises an EEA right under the UCITS Directive.</u></p>	From <u>13 February 2004 to 12 February 2007</u>	<u>13 February 2004</u>

...

2.2.2 R ...

(7) The instrument of incorporation must not contain a provision preventing its shares being marketed in the United Kingdom.

...

2.2.6 R ...

(10) The trust deed must not contain a provision preventing its units being marketed in the United Kingdom.

...

3.1.3 G ...

(5) In addition COB 6 (Product disclosure) contains rules and guidance relating to information about authorised funds which must be provided or made available at the point of sale.

...

3.2.1 R (1)

*A prospectus must contain the matters specified in CIS 3.5 (Information to be contained in the prospectus) and it must be drawn up in English and published as a document by the authorised fund manager and, in the case of an ICVC, approved by the directors.*

...

3.2.2 R (1)

*An ICVC or the manager of an AUT: must supply a copy of the prospectus drawn up in accordance with CIS 3.2.1R (Drawing up of prospectus) free of charge:*

(a) must not market units in an authorised fund in the United Kingdom unless: to any person on request; and

- ~~(i) a *prospectus* has been drawn up in English and approved in accordance with *CIS 3.2.1R*;~~
    - ~~(ii) arrangements have been made for that *prospectus* to be available to enable the *ICVC* or *manager* of the *AUT* to satisfy those who accept the offer referred to in *CIS 3.2.2R(1)(b)*; and~~
    - ~~(iii) a copy of that *prospectus* has been sent to the FSA and to the depositary;~~
  - (b) must not effect any *sale* of those *units* to any *person* in the *United Kingdom* until it has offered that *person* free of charge a copy of that *prospectus* to the FSA.
- (2) An *ICVC* which is a *UCITS scheme*, or the *manager* of an *AUT* which is a *UCITS scheme*, must not:
  - (a) must not market *units* in the territory of another *EEA State* unless: a *prospectus* has been drawn up in an official language of that *EEA State* and, in the case of an *ICVC*, approved by the *directors*; and
    - ~~(i) a *prospectus* has been drawn up in an official language of that *EEA State* and, in the case of an *ICVC*, approved by the *directors*; and~~
    - ~~(ii) arrangements have been made for the *prospectus* to be available to enable the *ICVC* or *manager* of the *AUT* to satisfy those who accept the offer referred to in (b) below;~~
  - (b) effect any *sale* of *units* to any *person* in the territory of that *EEA State* until it has offered that *person* free of charge a copy of that must supply the *prospectus* to any purchaser of *units* free of charge on request. before the

conclusion of that sale.

...

3.5.2 R Table Contents of the prospectus

This table belongs to CIS 3.5.2R

...

3 Investment objectives and policy

...

(15) In the case of a UCITS scheme, the historical performance in accordance with COB.

(16) In the case of a UCITS scheme, the profile of the typical investor for whom the scheme is designed.

...

6 ...

(14) In the case of a UCITS scheme, which functions the authorised fund manager may delegate.

...

23 ...

(6) In the case of a UCITS scheme, any possible fees or expenses not described in paragraphs 12-22, distinguishing between those to be paid by a holder and those to be paid out of scheme property.

...

7.1.4 G (1) The OEIC regulations require:



...

...

- (b) that if an *ICVC* has only one *director*, that *director* must be a *body corporate* which is an *authorised person* and has ~~permission under Part IV of the Act (Permission to carry on regulated activities)~~ to act as a *director* of an *ICVC*,

...

...

- (3) Each *ICVC* must have an *ACD* (or equivalent). ...

...

...

- 7.2.1 R (1) If there is only one director of the type described in *CIS* 7.1.4G(1)(b) it must be an *ACD* or an *EEA UCITS management company*, ...
  - (1A) If an *EEA UCITS management company* is the sole *director*, that *company* must carry out the functions of the *ACD* as set out in *CIS* 7.3.1R (Functions of the *ACD*).

...

...

- 7.6.1 R ...
  - (2) The *ACD* or the *directors* have the power to retain the services of anyone, including the depositary, to assist the *ACD* or the *directors* (as the case may be) to perform their respective functions, provided that:
    - (a) a mandate in relation to *managing investments* of the *scheme property* is not given to:
      - (i) the *depositary*;

- (ii) any other person whose interests may conflict with those of the ACD or the holders; or
  - (iii) any other person who is not authorised or registered for managing of investments and is not subject to prudential supervision (unless there is agreement in place between the FSA and the overseas regulator of the delegate ensuring adequate co-operation);
- (b) the ACD ensures that at all times it may monitor effectively the relevant activities of any person so retained; and
- (c) the mandate permits the ACD to:
  - (i) give further instructions to the person so retained; and
  - (ii) withdraw the mandate with immediate effect when this is in the interests of the holders.
- (d) the mandate does not prevent effective supervision of the ACD and it must not prevent the ACD from acting, or the scheme from being managed, in the best interests of the holders.

...

- (4) ~~If:-~~
  - (a) ~~the ACD retains the services of (or causes the ICVC to retain the services of) anyone to assist the ACD to perform any function concerning the management of the scheme property of the ICVC; or~~
  - (b) ~~the ACD or the directors of the ICVC retain the services of (or cause the ICVC to retain the services of) the depository, or an associate of any of the directors of the~~

~~ICVC or of the depositary, to assist the ACD or the directors (as the case may be) to perform any of their respective functions; or in~~

- ~~(e) the depositary retains the services of a *director* of the ICVC or an associate of such a *director* or of the depositary to assist the depositary to perform the functions of the depositary~~

~~then, in the case of (a), the ACD and in the case of (b), the ACD or the *directors* and in the case of (c), the depositary, remains responsible for the acts or omissions of the *person* retained as if they were the acts or omissions of the ACD or of the *directors* or of the depositary (as the case may be). Subject to the provisions of the OEIC Regulations and to (1) where services are retained under (2) the responsibility which the ACD had in respect of such services prior to that retention of services will remain unaffected.~~

- ~~(5) Subject to the provisions of the OEIC regulations and to (1) and (4), a *person* retaining services under (2) or (3) will not be held responsible by the FSA by virtue of the *rules* in CIS for any act or omission of the *person* so retained if the *person* retaining services can show: Where a *depositary* retains services under (3):~~

- ~~(a) that it was reasonable for the *person* retaining services to obtain assistance to perform the function in question; if it retains the services of a *director* of the ICVC, or an associate of such a *director* or its own *associate* to assist in the performance of its functions, then its liability in respect of those services shall remain unaffected, and~~
- ~~(b) that the *person* retained was and remained competent to~~

~~provide assistance in the performance of the function in question; and in any other case it will not be held responsible by virtue of the *rules* in *CIS* for any act or omission of the *person* so retained if it can show:~~

~~(i) that it was reasonable for it to obtain assistance to perform the function in question;~~

~~(ii) that the *person* retained was and remained competent to provide assistance in the performance of the function in question; and~~

~~(e) (iii) that ~~the *person* retaining services~~ it had taken reasonable care to ensure that the assistance in question was provided by the *person* retained in a competent manner.~~

(6) ~~At any time when *CIS* 7.2.1R(5)(The directors) applies, the *directors* have, in respect of the functions conferred on the *ACD* in accordance with *CIS* 7.3.1R (The *ACD*), the same rights to retain the services of other *persons* to assist in the performance of those functions and have the same responsibilities for the acts or omissions of the *person* retained that an *ACD* has under this rule *CIS* 7.6.1 and responsibilities as for an *ACD* under this rule.~~

7.6.2 G (1) *SYSC* 3.2...

(2) *SUP* 15.8.4R requires an *ACD* of a *UCITS* scheme to inform the *FSA* where any of its duties is delegated to another *person*.

...

7.10.4 R (1) The *manager* may delegate any function to any *person*, including the *trustee*, provided that:

- (a) a mandate in relation to *managing investments* of the *scheme property* is not given to:
  - (i) the *trustee*;
  - (ii) any other *person* whose interests may conflict with those of the *manager* or the *holders*; or
  - (iii) any other *person* who is not authorised or registered for *managing of investments* and is not subject to prudential supervision (unless there is agreement in place between the *FSA* and the *overseas regulator* of the delegate ensuring adequate co-operation);
- (b) the *manager* ensures that at all times it may monitor effectively the relevant activities of any *person* so retained; and
- (c) the mandate permits the *manager* to:
  - (i) give further instructions to the *person* so retained;
  - (ii) withdraw the mandate with immediate effect when this is in the interests of the *holders*;
- (d) the mandate does not prevent effective supervision of the *manager* and must not prevent the *manager* from acting, or the *scheme* from being managed, in the best interest of the *holders*.

...

- (5) ~~If:~~ Where delegation occurs under (1) the responsibility which the *manager* had in respect of such delegated services prior to that delegation will remain unaffected.
  - (a) ~~the *manager* delegates any function concerning the management of the *scheme property*; or~~

~~(b) the *manager* delegates any function to the *trustee* or to an associate of its own or of the *trustee*; or~~

~~(c) the *trustee* delegates any function to the *manager* or to an associate of its own or of the *manager*;~~

~~the *manager* or as the case may be the *trustee*, remains responsible, for the acts or omissions of the delegate as if they were the acts or omissions of the *manager*, or as the case may be of the *trustee*.~~

(6) ~~In the case of any delegation by the *manager* or the *trustee* to which (5) does not apply, the *manager*, or as the case may be the *trustee* will not be held responsible by virtue of the *rules* in CIS for any act or omission of the delegate if the *manager* (or *trustee*) can show: Where delegation occurs under (4):~~

~~(a) that it was reasonable for a delegate to be employed for the function in question; and if the *trustee* delegates any function to the *manager* or to an associate of its own or of the *manager*, the *trustee's* liability in respect of the function remains unaffected; and~~

~~(b) that the delegate was and remained competent to undertake the function in question; and in any other case the *trustee* will not be held responsible by virtue of the *rules* in CIS for any act or omission of the delegate if it can show:~~

~~(i) that it was reasonable for a delegate to be employed for the function in question;~~

~~(ii) that the delegate was and remained competent to undertake the function in question; and~~

~~(c) (iii) that the *manager* (or *trustee*) it had taken~~

reasonable care to ensure that the function in question was undertaken by the agent in a competent manner.

- 7.10.5 G (1) *SYSC 3.2 ...*
- (2) *SUP 15.8.4R requires an ACD of a UCITS scheme to inform the FSA where one of its duties is delegated to another person.*

...

Reports to be offered to purchasers of units made available

- 10.5.3 R (1) ~~Neither the ICVC nor the authorised fund manager shall effect any issue or sale of units to any person in the United Kingdom until it has offered that person free of charge a A copy in English of the most recent annual report of the authorised fund and (if more recent) the most recent half-yearly report on the authorised fund must be sent to any person, free of charge, on request before the conclusion of that sale.~~
- (2) ~~Neither the ICVC nor the authorised fund manager shall effect any issue or sale of units to any person in the territory of a EEA State other than the United Kingdom until it has offered that person free of charge a copy, in an official language of that EEA State, of the most recent annual report on the authorised fund and (if more recent) the most recent half-yearly report on the authorised fund before the conclusion of that sale.~~

...

Restrictions of business of Managers of UCITS schemes

16.5

- 16.5.1 R A *firm* which is the ~~*manager*~~ of an *AUT* which is *authorised fund manager of* a *UCITS* scheme must not engage in any activities other than:
- (1) acting as ~~*manager*~~ of:
    - (a) a ~~*unit trust*~~; *manager of an authorised fund*; or
    - (b) ~~*-ended investment company*~~ or any other body corporate whose business consists of investing its funds with the aim of spreading investment risk and giving its members the benefit of the results of — the management of its funds by or on behalf of that body; or
    - (eb) *an operator of any other collective investment scheme for which the firm is subject to prudential supervision and under which the contribution of the participants and the profits or income out of which payments are to be made to them are pooled*; or
  - ...
  - (4) *managing investments*;
  - (5) *advising on investments* where the *firm* has a *permission* in respect of (4);
  - (6) *safekeeping and administration of collective investment scheme units* where the *firm* has a *permission* in respect of (4).

...



After, CIS 17.1.2G, insert the following new section:

**Guidance on passportable activities**

17.1.3 G CIS 16.1.8G provides *guidance* on notifications of *schemes* constituted in other *EEA States*. The *manager* of such a *scheme* will be a *UCITS qualifier*, and so be an *authorised person* under Schedule 5 to the *Act*, if it carries out *scheme management activity* and activity in connection with the operation of the *scheme* only. If the manager of such a *scheme* wishes to undertake the passportable activities of *managing investment* (other than of a *collective investment schemes*, *investment advice* or *safekeeping and administration of investments*, as provided by article 5(3) of the *UCITS Directive*, as well as *scheme management*, it will need to do so in accordance with an authorisation conferred by Schedule 3 to the *Act* and should refer to the procedures in *AUTH 5* and *SUP 14* accordingly.

...

17.2.1 G ...

(4) The following information and documentation must be provided:

...

(1) a copy of the *prospectus* and simplified prospectus of the *scheme*; and

...

## Annex J

### Amendments to the Glossary

Insert the following new definitions in the appropriate alphabetical position:

*EEA UCITS management company* (as defined in article 1a (2) of the *UCITS Directive*) any *incoming EEA firm*, the regular business of which is the *management* of *UCITS* in the form of unit trusts or common funds or of investment companies (collective portfolio management of *UCITS*) or of both; this includes the functions mentioned in Annex II.

*relevant scheme* a *collective investment scheme* managed by an *EEA UCITS management company*.

*UCITS firm* a *firm* which:

- (a) is the *operator* of a *UCITS scheme* including where in addition the *firm* is also the *operator* of a *collective investment scheme* which is not a *UCITS scheme*; and
- (b) does not have a Part IV *permission* to carry on any *regulated activities* other than those which are in connection with, or for the purposes of, such schemes.

*UCITS investment firm* a *firm* which:

- (a) is the *operator* of a *UCITS scheme* including where in addition the *firm* is also the *operator* of a *collective investment scheme* which is not a *UCITS scheme*; and
- (b) has a Part IV *permission* to *manage investments* where the *investments managed* include one or more of the instruments listed in Section B of the Annex to the *ISD*.

*UCITS management company* a *firm* which is either:

- (a) a *UCITS firm*; or
- (b) a *UCITS investment firm*.

Amend the following definitions as shown (underlining indicates new text and striking through indicates deleted text).

*authorised corporate director*

the *director* of an *ICVC* who is the authorised corporate *director* of the *ICVC* in accordance with *CIS 7.2.1R (The directors)* including, if relevant, an *EEA UCITS management company*.

*branch*

...

(d) [reserved for amendments implementing the Insurance Mediation Directive]

(e) [reserved for amendments implementing the Insurance Mediation Directive]

(f) (in relation to an *EEA UCITS management company*):

(i) a place of business which is a part of an *EEA UCITS management company*, which has no separate legal personality and which provides the services for which the *EEA UCITS management company* has been authorised;

(ii) for the purposes of the *UCITS Directive*, all the places of business set up in the same *EEA State* by an *EEA UCITS management company* with headquarters in another *EEA State* are to be regarded as a single *branch*.

*EEA firm*

(in accordance with paragraph 5 of Schedule 3 to the *Act* (EEA Passport Rights)) any of the following, if it does not have its head office in the *United Kingdom*:

...

(e) [reserved for amendments implementing the Insurance Mediation Directive]

(f) (from 13 February 2004) a management company (as defined in article 1a of the *UCITS Directive*) which has been authorised under article 5 of that directive by its *Home State regulator*.

*Home State*

...

(3) (in relation to a *UCITS management company*) the *EEA State* in which the *management company's* registered office is situated;

~~(3)~~ (4) ...

(4) ~~(5)~~ ...

~~(5)~~ (6) ...

*investment management company* a firm whose permitted activities include designated investment business, which is not an authorised professional firm, bank, ELMI, building society, credit union, energy market participant, friendly society, ICVC, insurer, media firm, oil market participant, service company, incoming EEA firm (without a top-up permission), incoming Treaty firm (without a top-up permission), UCITS management company or UCITS qualifier (without a top-up permission), whose permission does not include a requirement that it comply with IPRU(INV) 3 or 10 (Securities and futures firms) or 13 (Personal investment firms) and which is within (a), (b) or (c):

*manager*

- ...
- (1) (in relation to an *AUT*) the firm which is the manager of the *AUT* in accordance with the *trust deed*.
- (1A) (in relation to an OEIC which is an undertaking for collective investment in transferable securities within the meaning of the UCITS Directive and which has appointed a person to manage the scheme) the person appointed to manage the scheme.
- (2) (as defined in section 423(1) and (2) of the *Act* (Manager)) (except in relation to a *unit trust scheme* or an undertaking for collective investment in transferable securities within the meaning of the *UCITS Directive* (other than a *unit trust scheme*) or an undertaking or a registered friendly society):
- (a) an employee who:
- (i) under the immediate authority of his employer, is responsible, either alone or jointly with one or more other individuals, for the conduct of his employer's business; or
- (ii) under the immediate authority of his employer or of a person who is a manager in accordance with (i) exercises managerial functions or is responsible for maintaining accounts or other records of his employer;
- (b) if the employer is not an individual, references in (a) to the authority of the employer are references to the authority:
- (i) in the case of a *body corporate*, of the directors;
- (ii) in the case of a *partnership*, of the partners; and
- (iii) in the case of an unincorporated association, of its officers or the members of its governing body.
- (3) (as defined in section 423(3) of the *Act* (Manager)) (in relation to a *body corporate* other than one covered at (1A) above):

- (a) a *person* (other than an employee of the body) who is appointed by the body to manage any part of its business, including an employee of the *body corporate* (other than the *chief executive*) who under the immediate authority of a director or *chief executive* of the *body corporate* exercises managerial functions or is responsible for maintaining accounts or other records of the *body corporate*;
- (b) for the purposes of (a) and in relation to a *body corporate* whose principal place of business is within the *United Kingdom*, the *chief executive* includes only a *person* who is an employee of the *body corporate* in accordance with section 417(1) of the *Act* (Definitions).

operator

...  
(1) (except in *ENF*):

- (a) in relation to an *AUT*) the *manager*;
- (b) (in relation to an *ICVC*) that *company* or, if applicable, the *authorised corporate director*;
- (ba) (in relation to any other *OEIC* which is an undertaking for collective investment in transferable securities within the meaning of the *UCITS Directive* and which has appointed a *person* to manage the *scheme*) the *manager*;
- (c) (in relation to any other *collective investment scheme* that is a *unit trust scheme* with a separate *trustee*) any *person* who, under the *trust deed* establishing the *scheme*, is responsible for the management of the property held for or within the *scheme*;
- (d) (in relation to any other *collective investment scheme* that is an *OEIC*) that *company* or, if applicable, any *person* who, under the constitution or founding arrangements of the *scheme*, is responsible for the management of the property held for or within the *scheme*;
- (e) (in relation to any other *collective investment scheme*) any *person* who, under the constitution or founding arrangements of the *scheme*, is responsible for the management of the property held for or within the *scheme*;
- (f) (in relation to an *investment trust savings scheme*) any *person* appointed, by those responsible for managing the property of the *investment trust*, to manage the *investment trust savings scheme*.

(2) (in *ENF*) (in accordance with section 237(2) of the *Act* (Other definitions)):

- (a) ~~(in relation to a *unit trust scheme* with a separate *trustee* the *manager*; and~~

(b) ~~in relation to an open-ended investment company~~ that company.

(a) (in relation to a unit trust scheme with a separate trustee) the manager;

(b) (in relation to an OEIC which is an undertaking for collective investment in transferable securities within the meaning of the UCITS Directive and which has appointed a person to manage the scheme) the manager;

(c) (in relation to any other OEIC) the company.

*participant  
firm*

a firm other than:

(a) in accordance with section 210 of the *Act* (The Compensation scheme) and regulation 2 of the *Electing Participants Regulations* (Persons not to be regarded as relevant persons) an *incoming EEA firm* which is:

(i) a *credit institution*;

(ii) an *ISD investment firm*; or

(iii) a UCITS management company; or

(iv) both (i) and (ii);

in relation to its *passport activities*, unless it has *top-up cover* (and in the case of a *UCITS management company*, only in relation to the services referred to in Article 5(3) of the *UCITS Directive*, that is managing investments (other than of a collective investment scheme), advising on investments or safeguarding and administering investments);

*personal  
investment  
firm*

a firm whose *permitted activities* include *designated investment business*, which is not an *authorised professional firm*, bank, *ELMI*, *building society*, *credit union*, *energy market participant*, *friendly society*, *ICVC*, *insurer*, *media firm*, *oil market participant*, *service company*, *incoming EEA firm* (without a *top-up permission*), *incoming Treaty firm* (without a *top-up permission*), UCITS management company or *UCITS qualifier* (without a *top-up permission*), whose *permission* does not include a *requirement* that it comply with *IPRU(INV) 3* (Securities and futures firms), 5 (Investment management firms) or 10 (Securities and futures firms), and which is within (a), (b) or (c):

...

*securities and futures firm* a firm whose permitted activities include designated investment business, which is not an authorised professional firm, bank, ELMI, building society, credit union, friendly society, ICVC, insurer, media firm, service company, incoming EEA firm (without a top-up permission), incoming Treaty firm (without a top-up permission), UCITS management company or UCITS qualifier (without a top-up permission), whose permission does not include a requirement that it comply with IPRU(INV) 5 (Investment management firms) or 13 (Personal investment firms), and which is within (a), (b), (c), (d), (e) or (f):

...

*service conditions* (in accordance with paragraph 14 of Schedule 3 to the Act (EEA Passport Rights)) the conditions that:

- (a) the firm has given its Home State regulator notice of its intention to provide services in the United Kingdom;
- (b) the firm falls within paragraph (a), ~~(d)~~, (e) or (f) in the definition of “EEA firm”, the FSA has received notice from the firm’s Home State regulator containing such information as may be prescribed; and
- (c) if the firm falls within paragraph (d) of that definition, its Home State regulator has informed it that the regulator’s notice has been sent to the FSA.

*Single Market Directives* (as defined in paragraph 1 of Schedule 3 to the Act (EEA Passport Rights));

- (a) the Banking Consolidation Directive;<sup>2</sup>
- (b) [deleted]
- (c) the Insurance Directives ~~and~~;
- (d) the Investment Services Directive;
- (e) [ reserved for amendments implementing the Insurance Mediation Directive]
- (f) (from 13 February 2004) the UCITS Directive.

*top-up-cover* cover provided by the compensation scheme for claims against an incoming EEA firm (which is a credit institution, an ISD investment firm or a UCITS management company)...

*UCITS Directive* the Council Directive of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities ( UCITS) No 85/611/EEC) as amended by Directives 88/220/EEC, 95/26/EC, 2000/64/EC, 2001/107/EC, 2001/108/EC;

UCITS qualifier a firm (other than an EEA UCITS management company) which:





**INTERIM PRUDENTIAL SOURCEBOOK FOR BANKS  
(AMENDMENT NO 5) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

**Commencement**

- B. This instrument comes into force on 1 September 2003.

**Amendments to the Interim Prudential sourcebook for banks**

- C. The interim Prudential sourcebook for banks is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Interim Prudential Sourcebook for Banks (Amendment No 5) Instrument 2003.

By order of the Board  
17 July 2003

**Annex**  
**Amendments to IPRU(BANK)**

In this Annex, underlining indicates new text and striking through indicates deleted text.

Volume 2

Chapter CD

6 BANKING BOOK – PROTECTION SELLER

...

6.3 Multiple names

...

8 If the contract terminates and pays out on the first asset to default in the basket, the bank should hold capital against all the names in the basket. Where it pays out upon the second asset to default, the bank should hold capital against all the names in the basket except one. The bank can choose which one to exclude.

a) ...

9 This means that risk weightings are applied to the maximum payout under the contract for ~~each~~ all (or all but one, in the case of second to default) of the names in the basket, capped at an equivalent of a deduction from capital. However, in the case of a first or second to default credit linked note which is rated such as to meet the conditions for recognition as a qualifying debt item, the bank may choose to hold capital against one name in the basket. However, the bank should choose the one with the highest risk weight.

a) Chapter TI defines qualifying debt item.

...

7 TRADING BOOK TREATMENT

...

7.3.4 *Specific risk – multiple reference assets*

...

15 The credit risk buyer in a first to default product or note should record long positions in each of the assets in the basket, ~~with~~ whilst a second to default note should be treated as long positions in each of the assets in the basket except one. The bank can choose which one to exclude. ~~†The total capital charge for the~~ either product can be capped at the equivalent of deduction from capital, with the exception noted below.

a) The amount of ~~the~~ each position recorded will be the value of the note.

- b) 17 below gives an exception to this 'additive approach'. In addition, the FSA may consider disapplying the additive treatment that this is not needed where a bank can demonstrate, to the FSA's satisfaction, ~~that there is~~ a very strong correlation between the ~~reference~~ assets in the basket.

**INTERIM PRUDENTIAL SOURCEBOOK FOR BUILDING SOCIETIES  
(AMENDMENT NO 6) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

**Commencement**

- B. This instrument comes into force on 1 September 2003.

**Amendments to the Interim Prudential sourcebook for building societies**

- C. The Interim Prudential sourcebook for building societies is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Interim Prudential Sourcebook for Building Societies (Amendment No 6) Instrument 2003.

By order of the Board  
17 July 2003

**Annex**  
**Amendments to IPRU(BSOC)**

In this Annex, underlining indicates new text and striking through indicates deleted text.

Volume 1  
ANNEX 4B  
CD: section 6

6            BANKING BOOK – PROTECTION SELLER

...

6.3           Multiple names

...

8            If the contract terminates and pays out on the first asset to default in the basket, the bank should hold capital against all the names in the basket. Where it pays out upon the second asset to default, the bank should hold capital against all the names in the basket except one. The bank can choose which one to exclude.

    a)    ...

9            This means that risk weightings are applied to the maximum payout under the contract for ~~each~~ all (or all but one, in the case of second to default) of the names in the basket, capped at an equivalent of a deduction from capital. However, in the case of a first or second to default credit linked note which is rated such as to meet the conditions for recognition as a qualifying debt item, the bank may choose to hold capital against one name in the basket. However, the bank should choose the one with the highest risk weight.

    a)    Chapter TI defines qualifying debt item.

7            TRADING BOOK TREATMENT

...

7.3.4        *Specific risk – multiple reference assets*

...

15           The credit risk buyer in a first to default product or note should record long positions in each of the assets in the basket, ~~with~~ whilst a second to default note should be treated as long positions in each of the assets in the basket except one. The bank can choose which one to exclude. †The total

capital charge for ~~the~~ either product can be capped at the equivalent of deduction from capital, ~~with the exception noted below.~~

- a) The amount of ~~the~~ each position recorded will be the value of the note.
- b) 17 below gives an exception to this 'additive approach'. In addition, the FSA may consider disapplying the additive treatment that this is not needed where a bank can demonstrate, to the FSA's satisfaction, ~~that there~~ is a very strong correlation between the ~~reference~~ assets in the basket.

**INTERIM PRUDENTIAL SOURCEBOOK FOR INVESTMENT BUSINESSES  
(AMENDMENT NO 5) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers); and
  - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 September 2003.

**Amendments to the Interim Prudential sourcebook for investment businesses**

- D. The Interim Prudential sourcebook for investment businesses is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Interim Prudential Sourcebook for Investment Businesses (Amendment No 5) Instrument 2003.

By order of the Board  
17 July 2003

**Annex**  
**Amendments to IPRU(INV)**

In this Annex, underlining indicates new text and striking through indicates deleted text.

Chapter 3

Appendix 1 - GLOSSARY OF TERMS FOR IPRU(INV)3

<i>designated investment exchange</i>	means any investment exchange which is defined as such in <del>Appendix 33</del> <u>the central Handbook Glossary.</u>
<i>exchange</i>	means a <i>recognised investment exchange</i> (as defined in the Act), or <i>designated investment exchange</i> *. ( <del>*For the list of <i>designated investment exchanges</i>, see Appendix 33).</del>
<i>inter-professional</i>	for the purpose of <del>repurchase, reverse repurchase, sale and buy back and buy and sale back</del> agreements means an agreement with a counterparty which is one of the following — (a) a <i>Zone A credit institution</i> ; (b) an <i>investment firm</i> ; (c) a <i>recognised third country investment firm</i> ; (d) a <i>recognised exchange</i> ; (e) a <i>recognised clearing house</i>
<i>recognised exchange</i>	means an exchange listed in <del>appendix 57</del>
<i>recognised investment exchange</i>	means an investment exchange which is declared by a <i>recognition order</i> for the time being in force to be a <i>recognised investment exchange</i> (see the list published on the FSA website at: <a href="http://www.fsa.gov.uk/register-res/html/prof_exchanges_fram.html">www.fsa.gov.uk/register-res/html/prof_exchanges_fram.html</a> .)
<i>recognised third country investment firm</i>	means an undertaking which if it was established within the <i>EEA</i> would be covered by the definition of an investment firm, and which is subject to the prudential rules of one of the regulators in <del>Appendix 59</del>

...

Appendix 33 (exchanges)  
LIST OF ~~RECOGNISED INVESTMENT, DESIGNATED INVESTMENT AND APPROVED EXCHANGES~~

delete 1 (Recognised investment exchanges) and 2 (Designated investment exchanges)

...



~~3~~ ~~Approved exchanges~~ [delete the heading]

The following exchanges are approved for the purposes of the definition of “approved exchange” -

Athens Stock Exchange (ASE)

...

...

delete Appendix 57 (List of exchanges and clearing houses recognised for the purposes of IPRU(INV)3 and Appendix 59 (List of regulators for the purposes of the definition of recognised third country investment firms).

...

Chapter 5:

APPENDIX 1 (INTERPRETATION)

GLOSSARY OF TERMS FOR CHAPTER 5 (FORMER IMRO FIRMS)

(In IPRU(INV), Chapter 5, Appendix 1, this text is at page 12 of 23)

...

*investment firm* ~~see the meaning given to the term in the *Glossary*~~ has the meaning given to *investment firm* in the main *Glossary* except that it excludes persons to which the *ISD* does not apply as a result of article 2.2 of the *ISD*.

...

...

Chapter 10

Appendix 1 - GLOSSARY OF TERMS FOR IPRU(INV)10

*approved bank bond* ~~means any instrument, by whatever name called, provided by an *approved bank* which—~~

...

*designated investment exchange* ~~means any investment exchange which is defined as such in ~~appendix 33~~~~ the central Handbook Glossary.

*exchange* ~~means a *recognised investment exchange* (as defined in the Act), or~~

*designated investment exchange.* (~~For the list of *designated investment exchanges*, see Appendix 33).~~

*marketable investment*

means:  
...

*operator*

means:  
...

*OTC*

means over the counter, i.e. in relation to any *investment*, an *investment* which is not traded or listed on an exchange ~~or an *approved exchange*.~~

*recognised investment exchange*

means an investment exchange which is declared by a *recognition order* for the time being in force to be a *recognised investment exchange* (see the list published on the FSA website at: [www.fsa.gov.uk/register-res/html/prof\\_exchanges\\_fram.html](http://www.fsa.gov.uk/register-res/html/prof_exchanges_fram.html).)

*regulated banking institution*

~~means any banking institution which has paid up share capital and reserves of over £5,000,000 as shown by its latest published audited accounts, and which is authorised by the *FSA* or supervised by the central bank or other regulatory authority of a member state of the *OECD* in which the bank is incorporated.~~

...

delete Appendix 33 (List of recognised investment, designated investment and approved exchanges)

...

## Appendix 57

List of Exchanges and Clearing Houses recognised for the purposes of IPRU(INV) 10

### 1 Exchanges recognised for the purposes of IPRU(INV) 10

- a. Any *recognised investment exchange* (~~see Appendix 33~~)
- b. Any *designated investment exchange* (~~see Appendix 33~~)
- c. Any regulated market listed in (~~see SUP 17 Ann 5C~~)

### 2 Clearing houses recognised for the purposes of IPRU(INV)10

- a. Any Recognised Clearing House as defined in the Central Handbook Glossary.
- b. Any of the following clearing houses:

ASX Settlement and Transfer Corporation Pty Ltd (ASTC)

...

**CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT NO 13)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the powers listed in Schedule 4 to the Conduct of Business sourcebook.
- B. The rule-making powers listed in that Schedule are specified for the purpose of section 153(2) of the Financial Services and Markets Act 2000 (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 September 2003.

**Amendments to the Conduct of Business sourcebook**

- D. The Conduct of Business Transitional Rules are amended in accordance with Annex A to this instrument.
- E. The Conduct of Business sourcebook is amended in accordance with Annex B to this instrument.

**Amendments to the Glossary**

- F. The Glossary is amended in accordance with Annex C to this instrument.

**Citation**

- G. This instrument may be cited as the Conduct of Business Sourcebook (Amendment No 13) Instrument 2003.

By order of the Board  
17 July 2003

Annex A

**Amendment to the Conduct of Business Transitional Rules**

In this Annex, underlining indicates new text and striking through indicates deleted text.

**4 Table Miscellaneous Transitional Rules**

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies: All rules in the Handbook		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
... 9	<u>Rules in the Handbook</u>	<u>R</u>	<u>Classification of CISs</u> <u>If a <i>firm</i> at any time before 1 September 2003 classified a <i>collective investment scheme</i> in accordance with COB 4.1 (Client classification) as in force at that time, it will not contravene any of the rules in the Handbook by treating the scheme in accordance with that classification.</u>	<u>From 1 September 2003</u>	<u>Various</u>

**Annex B**  
**Amendments to the Conduct of Business sourcebook**

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.2.1 R *COB* applies to every *firm*, except that:

- (1) *COB* 9 (Client assets) does not apply to an *incoming EEA firm* other than an *insurer*, with respect to its *passported activities*;

...

~~ISD investment~~ UK firms: custody services from EEA branches

1.4.9 R In addition to the situations in *COB* 1.4.2R and *COB* 1.4.4R, *COB* 9 (Client assets) applies to a all UK firms, other than *insurers*, ~~which is an *ISD investment firm*~~ in relation to *passported activities* carried on by it from a *branch* in another *EEA State*.

...

Restriction in connection with ~~the sale of~~ packaged products

2.2.5 E (1) A *firm* should not enter into any of the following arrangements with an *independent intermediary* in relation to ~~the sale of a packaged product~~ if any *commission* is required to be disclosed to a *customer* under *COB* 6.2 (Provision of key features):

...

- (d) an arrangement to pay *commission* other than to the *firm* responsible for ~~the~~ a sale, unless:

...

...

3.7.5 G A *firm* may arrange for records to be kept in such form as it chooses, such as hard copy, disk or tape. If the *financial promotion* is not in a written form, the record should represent the actual *financial promotion* as accurately as possible. A record would be “readily accessible” if it were available for inspection within 48 hours of the request being made. SYSC 3.2.20R (2) (Records to be capable of reproduction on paper) does not apply to records of ~~non-~~*real time financial promotions*.

...

3.9.27 G To meet the requirements of *COB* 3.9.26R, a *direct offer financial promotion relating to an Enterprise Investment Scheme* should include the following information about the company issuing the *EIS shares*:

- (1) assets and liabilities;
- (2) financial position;
- (3) profits and losses;
- (4) prospects; and
- (5) rights attaching to the *EIS shares*.

...

#### Classification of another firm or an overseas financial services institution

4.1.7 R ...

- (4) If C1 is a ~~regulated~~ *collective investment scheme*, C1 is a ~~private~~ an intermediate customer of F.
- (5) If C1 is an ~~unregulated~~ *collective investment scheme*, C1 is an ~~intermediate customer~~ of F. [deleted]

...

#### Classification of a collective investment scheme

- 4.1.7A G (1) COB 4.1.7R, paragraph (1)(b)(iii) of the definition of *client* and paragraph (1)(j) of the definition of *intermediate customer* together have the effect that a *collective investment scheme*, whether it has separate legal personality or not, will always be classified as an *intermediate customer*, unless classified as a *private customer* under COB 4.1.14R or (if an *unregulated collective investment scheme*) as a *market counterparty* under COB 4.1.12R. This means that, for a *firm* acting as the *trustee* of a unit trust, for example, the *client* for these purposes will be the scheme and therefore an *intermediate customer*.
- (2) The application of COB to an *operator, trustee* or *depository* is governed by COB 10 (Operators of collective investment schemes) and COB 11 (Trustee and depository activities).
- (3) In many cases, a *firm* such as an *investment manager* or *custodian* will carry on activities with or for an *operator, trustee* or *depository* of the scheme rather than with or for a scheme.

...

4.1.12 R A *firm* may classify a *client* (other than another *firm, regulated collective investment scheme*, or an *overseas financial services institution*) who would otherwise be an *intermediate customer* as a *market counterparty* if:

...

...

- 4.1.14 R (1) *A firm may classify as a private customer any client (other than a firm, unless it is an ICVC, or an overseas financial services institution) who would otherwise be a market counterparty or an intermediate customer, and must notify any such client accordingly.*  
 ...
- 9.1.6 G *Firms are reminded that, under COB 1.2.1R(1), the custody rules do not apply to an incoming EEA firm, other than an insurer, with respect to its passported activities. The application of the custody rules to the activity of a firm is also dependent on the location from which the activity is undertaken (see COB 1.4.3R).*  
 ...
- 9.2.3 G *Firms are reminded that, under COB 1.2.1R(1), the mandate rules do not apply to an incoming EEA firm, other than an insurer, with respect to its passported activities. The application of the mandate rules is also dependent on the location from which the activity is undertaken (see COB 1.4.3R).*  
 ...
- 9.3.3 G *Firms are reminded that, under COB 1.2.1R(1), the client money rules do not apply to an incoming EEA firm, other than an insurer, with respect to its passported activities. The application of the client money rules to the activity of a firm is also dependent on the location from which the activity is undertaken (see COB 1.4.3R).*  
 ...
- 9.4.2 G *Firms are reminded that, under COB 1.2.1R(1), this section does not apply to an incoming EEA firm, other than an insurer, with respect to its passported activities. The application of this section is also dependent on the location from which the activity is undertaken (see COB 1.4.3R).*  
 ...
- 10.2.2 G ~~[Deleted] Firms which are operators are reminded that under the Glossary:~~  
 (1) ~~every regulated collective investment scheme is a private customer; and~~  
 (2) ~~every unregulated collective investment scheme is an intermediate customer.~~  
 ...

10.2.5 R Table Application of conduct of business rules  
This table belongs to COB 10.2.1R

Application of conduct of business rules		
Chapter, Section or Rule	Description	Modifications
...		
7.5	Best execution	<u>In the case of a regulated collective investment scheme, COB 7.5 applies as if the scheme was a private customer.</u> In the case of an unregulated collective investment scheme, COB 10.5.3R applies instead of COB 7.5.4R in the circumstances set out in COB 10.5.3R.
...		

...

- 11.2.1 G ~~[Deleted] Firms which are depositaries are reminded that, under the Glossary:~~
- ~~(1) every regulated collective investment scheme is a private customer;~~
  - ~~and~~
  - ~~(2) every unregulated collective investment scheme is an intermediate customer.~~



## Annex C

### Amendments to the Glossary

- controlled activity* an activity specified in Part I of Schedule 1 to the *Financial Promotion Order* (Controlled activities)- (in accordance with section 21(9) of the Act (The classes of activity and investment)) any of the following activities specified in Part I of Schedule 1 to the *Financial Promotions Order* (Controlled Activities):
- (a) accepting deposits (paragraph 1)
  - (b) effecting contracts of insurance (paragraph 2(1));
  - (c) carrying out contracts of insurance (paragraph 2(2));
  - (d) dealing in securities and contractually based investments as principal or agent (paragraph 3(1));
  - (e) arranging (bringing about) deals in investments (paragraph 4(1));
  - (f) making arrangements with a view to transactions in investments (paragraph 4(2));
  - (g) managing investments (paragraph 5);
  - (h) safeguarding and administering investments (paragraph 6);
  - (i) advising on investments (paragraph 7);
  - (j) advising on syndicate participation at Lloyd's (paragraph 8);
  - (k) providing funeral plan contracts (paragraph 9);
  - (l) providing qualifying credit (paragraph 10);
  - (m) arranging qualifying credit etc. (paragraph 10A –coming into force 31 October 2004);
  - (n) advising on qualifying credit etc. (paragraph 10B –coming into force 31 October 2004);
  - (o) agreeing to carry on specified kinds of activity (paragraph 11) which are specified in paragraphs 3 to 10 (10B from 31 October 2004) of Part I of Schedule 1 to the *Financial Promotion Order*.

*direct offer financial promotion* a ~~non-real time~~ *financial promotion* which:

- (a) contains:
  - (i) an offer by the *firm* or another *person* to enter into a *controlled agreement* with anyone who responds to the *financial promotion*; or
  - (ii) an invitation to anyone who responds to the *financial promotion* to make an offer to the *firm* or another *person* to enter into a *controlled agreement*; ~~and~~
- (b) specifies the manner of response or includes a form in which any response is to be made (for example by providing a tear-off slip); and
- (c) is not a real time financial promotion.

*intermediate customer* (a) ...  
 ...  
 (j) ~~an unregulated collective investment scheme~~;  
 (k) ...  
 (l) ...

but excluding:

- (i) ~~a regulated collective investment scheme~~; and [deleted]
- (ii) ...

*private customer* (1) (except in COB 3) a client who is not a *market* counterparty or an *intermediate* customer, including:

- (a) an individual who is not a *firm*;
- (b) an overseas individual who is not an *overseas financial services institution*;
- (c) ~~a regulated collective investment scheme~~; [deleted]

...

**SUPERVISION MANUAL (AMENDMENT NO 12) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers); and
  - (3) section 157(1) (Guidance)

**Commencement**

- B. This instrument comes into force on 1 September 2003.

**Amendments to the Supervision manual**

- C. The Supervision manual is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Supervision Manual (Amendment No 12) Instrument 2003.

By order of the Board  
17 July 2003

## Annex

### Amendments to the Supervision manual

In this Annex, underlining indicates new text and striking through indicates deleted text.

15.8.3 R ...

(2) A notification in (1):

- (a) ~~need not be given unless the total amounts outstanding under (1) (a) and (b) in respect of the intermediary exceed £1,000; and~~
- (b) must give the identity of the intermediary and the amount of *commission* which remains outstanding;
- (b) need not be given unless the total amounts outstanding under 1(a) and (b) in respect of the intermediary exceed £1000; and
- (c) need not be given if the *insurer* has reported the events in SUP 15.8.3R(1)(a) and (b) on the database run for these purposes by Elixir.

...

16.3.17 R ...

(2) When a *firm* extends its accounting period, it must make the notification in (1) before the ~~previous~~ date which otherwise would have been the *accounting reference date*.

...

...

16.7.8 R Table Financial reports from a UK bank (see SUP 16.7.7R)

Content of Report	Form (Note 1)	Frequency	Due Date
...			
List of <i>companies</i> included in the <i>bank's</i> consolidated large exposure reporting (Note 2)	N/A	Annually	6 months after the <i>firm's accounting reference date</i>

Annual confirmation that all <i>companies</i> included in solo consolidation meet the criteria for such consolidation as set out in <i>IPRU (BANK) CS 9.2 (Note 7)</i>	N/A	Annually	6 months after the <i>firm's accounting reference date</i>
...			
<u>Note 7 = The requirement to submit this report applies only to a <i>bank</i> which, at the <i>firm's accounting reference date</i>, reports on a solo-consolidated basis in accordance with <i>IPRU (BANK) Chapter CS 9</i>.</u>			

...

16.7.49 R Table Financial reports required from a small personal investment firm (see SUP 16.7.48R)

Report	Frequency	Due Date
Annual questionnaire	Annually	4 months after the <i>firm's accounting reference date</i>
Audited consolidated annual financial statements (Notes 1, <del>and 2</del> and 3)	Annually	4 months after the <i>firm's accounting reference date</i>
<p>Note 1 = Only required from a <i>firm</i> if it is a <i>holding company</i>, or if one of its <i>controllers</i> is a company.</p> <p>Note 2 = The <i>firm</i> must submit the statutory accounts of the <i>group</i> to which it belongs.</p> <p><u>Note 3 = These must be the latest financial statements available.</u></p>		

...

SUP 16 Annex 2 G

...

Form BSD3

...

#### APPENDIX B-V: CAPITAL REQUIREMENT FOR FOREIGN EXCHANGE RISK

...

From 1 September 1999, only the basic method should be used to calculate foreign exchange risk unless the reporting institution is using a VaR model. Accordingly, Columns 2 and 3 are no longer applicable, as column 1 is the same as column 2.

...

#### APPENDIX B-V VALIDATIONS

Ref No.	Appx B-V Item No.
1	Column 1 = Column 2 + Column 3
2	NSOP Column 1 0
3	NSOP Column 2 = higher of the sum of the negatives or the sum of the positives (if equal defaults to positive)
<del>4</del>	<del>NSOP Column 3 = higher of the sum of the negatives or sum of the positives (if equal defaults to positive)</del>
<del>5-4</del>	<del>SUMG Column 1 0</del>
<del>6-5</del>	<del>SUMG Column 2 sum of the absolute values of gold</del>
<del>7</del>	<del>SUMG Column 3 sum of the absolute values of gold</del>
<del>8-6</del>	<del>CAPR Column 1 Zero</del>
<del>9-7</del>	<del>CAPR Column 2 8% of absolute value of NSOP in Column 2 plus SUMG in Column 2</del>
<del>10</del>	<del>CAPR Column 3 &gt;2% of absolute value of NSOP in Column 3 plus SUMG in Column 3</del>

In SUP 16 Ann 2G, amend the Form BSD3 Guidance Notes as follows:

**A300 Loans to non-group companies with which directors and controllers are associated**

For the purposes of this item (refer to SGN12 and 13), include as a director/controller any employee of the reporting institution who is appointed by the reporting institution to be a director of another company.

Any employee of the reporting institution is deemed to be associated with another company, whether the company is registered or domiciled in the UK or overseas, if any of the conditions set out in SGN14 are met:

The definition should be consistent with that adopted for reporting on Form LE2 or LE3, as appropriate.

Indicate, in the lines provided, in which weight band on the assets section of this return the lending has been reported.

If a loan reported here is of a capital nature, it should be included additionally in item A280.

...

**B110-B140 LARGE EXPOSURES IN THE TRADING BOOK**

When an exposure arising from tradable securities in the Trading Book exceeds 25% of adjusted capital base, it should be broken down on the Form LE2 or LE3, as appropriate, into the individual exposures undertaken with the group of connected counterparties. The nature of each exposure should be identified along with the appropriate capital charge for counterparty or specific risk. The reporting institution should show how these capital charges have been used to generate the additional capital charge for large exposures reported in items B120 and B130.

...

...

**B110 Adjusted large exposures capital base**

Report here the adjusted large exposures capital base (that is the adjusted capital base shown on Form LE2 (part 5), or Form LE3 (part 8) as appropriate, as at BSD3 reporting date) which the bank has agreed with the FSA.

...

## D170 Incremental capital for large exposures

This equals item B140 of section B divided by 8% and multiplied by the institution's Trading Book trigger ratio. Note that when this form is completed on a consolidated basis, item B140 will include incremental capital for large exposures for the consolidated group as set out on Form LE2 (part 5) or LE3 (Part 8) (that is including subsidiaries consolidated using the aggregation plus method as well as those consolidated line-by-line), since large exposures are consolidated line-by-line only.

...

In SUP 16 Ann 2G, amend the Form BSD3 validations as follows:

### **CROSS FORM VALIDATIONS: FORM LE2 AND FORM BSD3**

<b>Ref no</b>	<b>BSD items</b>	<b>LE2 items</b>
1	Appendix A-V 80s	$\geq$ _A4+_B4+_C4+_D4+_E4+_FB4 (SRN/1998/5)

### **CROSS FORM VALIDATIONS: FORM LE3 AND FORM BSD3**

<b><u>Ref no</u></b>	<b><u>BSD items</u></b>	<b><u>LE3 items</u></b>
<u>1</u>	<u>Appendix A-V 80s</u>	<u><math>\geq</math> DGT</u>
<u>2</u>	<u>B120+B130</u>	<u>= P8TOT</u>



In SUP 16 Ann 2G, amend the Guidance note on Large Exposures (Form LE3) as follows:

...

### **Reportable exposures**

...

Each exposure should appear as a single line of the report, so counterparty names should not straddle lines. If you have no exposures to report in a Part of the form, you should enter 0 in the box for the number of exposures reported in that Part. A form still needs to be submitted if there are no reportable exposures at all.

If you lend to non-bank counterparties within a banking group, or to a bank with a non-bank parent, you may encounter reporting problems. These may occur if your systems cannot segregate the non-banking exposures (reportable in Part 1) from the banking exposures (reportable in Parts 3-5). In such circumstances, you should report according to which sector the majority of the exposure is with at the reporting date. So, if the non-banking exposure accounts for more than 50% at the reporting date, show the whole exposure in Part 1, although you would not then benefit from any 1-3 year derivatives concession. If the majority of the exposure at the reporting date is to banks, then you should report the exposure in Parts 3-5 (and, for such exposures, columns E and T should be blank, otherwise the exposure in column F will be overstated).

...

**ENFORCEMENT MANUAL (AMENDMENT NO 2) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers in the Financial Services and Markets Act 2000.
- (1) section 157(1) (Guidance); and
  - (2) section 210 (Statements of policy).

**Commencement**

- B. This instrument comes into force on 1 September 2003.

**Amendments to the Enforcement manual**

- C. The Enforcement manual is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Enforcement Manual (Amendment No 2) Instrument 2003.

By order of the Board  
17 July 2003

## Annex

### Amendments to the Enforcement manual

In this Annex, underlining indicates new text, and striking through indicates deleted text.

- 13.5.1 G This section sets out the *FSA's* policy and procedures in relation to financial penalties for late submission of reports. It applies to reporting by *firms* required under all *rules* (not including the *listing rules*) which require *firms* to report to the *FSA* on a periodic basis. It also applies to periodic reporting by *firms* required by the provisions specified in (6) and (7). The following is a list of the main periodic reporting *rules* (the list may not be comprehensive) and those other provisions:
- (1) the *rules* set out in *SUP* 10.9.8 (Significant management functions) and *SUP* 16 (Reporting requirements);
  - (2) *IPRU(INS)* 9.37 (4) R, *IPRU(INS)* 9.38 R, and *IPRU(INS)* 9.6 (1) R, *IPRU(INS)* 9.6 (6) (Financial reporting) and *IPRU(INS)* 10.2 (Information to be provided to the *FSA*);
  - (3) *IPRU(FSOC)* 3.1(7) R (Management and control), *IPRU(FSOC)* 5.1(2)R, *IPRU(FSOC)* 5.2(2) R, and *IPRU(FSOC)* 5.2(3)R (Prudential reporting) and *IPRU (FSOC)* 6.3 (1) (Statistical information relating to EEA branches and services operations);
- ...
- 17.1.1 G This chapter applies to:
- (1) a person who is, or has been, an auditors and actuaries appointed by firms (including ICVCs) of a firm appointed under or as a result of a statutory provision;
  - (2) a person who is, or has been, an actuary acting for a firm and appointed under or as a result of a statutory provision; and
  - (3) an auditors appointed by an *AUTs*. under section 340(1) of the Act (Appointment).
- 17.1.2 G Auditors and actuaries fulfil a vital role in the management and conduct of firms and *AUTs*. Regulations made by the Treasury under sections 342(5) and 343(5) [the Financial Services (Communication by Auditors) Regulations 2001 are currently the subject of consultation, draft regulations in relation to actuaries will be published in due course] Provisions of the Act, and rules made under the Act and the *OEIC Regulations 2000* impose various duties on auditors and actuaries. These duties and

the *FSA*'s power to disqualify auditors and *actuaries* if they breach them will assist the *FSA* in pursuing its *regulatory objectives*, ~~of maintaining confidence in the financial system, protecting consumers and preventing financial crime~~. The *FSA*'s power to disqualify auditors in breach of duties imposed by *trust scheme rules* will also assist the *FSA* to achieve these *regulatory objectives* by ensuring that auditors fulfil the duties imposed upon them by these *rules*.

...

17.3.1 G Under section 345 of the *Act* (Disqualification), if it appears to the *FSA* that an auditor or *actuary* to whom section 342 of the *Act* applies has failed to comply with a duty imposed on him under the *Act*, it may disqualify him from acting as an auditor or *actuary* for any *firm* or any class of *firm*. Section 342 of the *Act* applies to those auditors and *actuaries* referred to in *ENF* 17.1.1G (1) and (2).

17.3.2 G The duties imposed on the auditors and *actuaries* of *firms* under the *Act* are:

...

- (2) the duties under sections 342(6) (Information given by auditor or actuary to the *FSA*) and 343(6) (Information given by auditor or actuary to the *FSA*: persons with close links) of the *Act* to communicate to the *FSA* any matter prescribed in ~~regulations made by the Treasury~~ The Financial Services and Markets Act 2000 (Communications by Auditors) Regulations 2001 (SI 2001/2587) and The Financial Services and Markets Act 2000 (Communications by Actuaries) Regulations 2003 (SI 2003/1294);

...

...

17.4.2 G *Appointed actuaries* of *firms* who are approved persons ~~and as such~~ will be subject to the *Statements of Principle* and *Code of Practice for Approved Persons*. When deciding whether to exercise its power to disqualify an *appointed actuary*, the *FSA* will consider whether this particular breach of duty can be adequately addressed by the exercise of its disciplinary powers in relation to *approved persons*. These powers and the factors that the *FSA* will take into account when deciding whether to exercise them are set out in *ENF* 11 (Discipline of authorised firms and approved persons: the *FSA*'s general approach), *ENF* 12 (Discipline of firms and approved persons: public censures and public statements) and *ENF* 13 (Discipline of firms and approved persons: financial penalties).

17.4.2A G In cases where the nature of the breach of duties set out in *ENF* 17.3.2G and *ENF* 17.3.3 G is such that the *FSA* has concerns about the fitness and propriety of an individual auditor or *actuary*, the *FSA* will consider whether it is appropriate to make a *prohibition order* instead of, or in addition to, disqualifying the individual (see *ENF* 8 (Prohibition of individuals)).

17.4.3 G (1) Under section 345(1) of the *Act* (Disqualification), the *FSA* may disqualify an auditor or *actuary* ~~appointed by, or an *actuary* acting for, a *firm* (including an *ICVC*)~~ to whom section 342 of the *Act* applies (see *ENF* 17.3.1G) from acting

for a specific *firm* or a particular class of *firm*. Under section 249(1) of the *Act* (Disqualification of auditor for breach of trust scheme rules), the *FSA* may disqualify an auditor appointed by an *AUT* from acting for any *AUT* or *ICVC*.

...

- 17.4.4 G When it decides whether to exercise its power to disqualify an auditor or *actuary* under section 345(1), and what the scope of any disqualification will be, the *FSA* will take into account all the circumstances of the case. These may include, but are not limited to, the following factors:
- (1) the nature and seriousness of any breach of *rules* and the effect of that breach: the *rules* are set out in *SUP* 3 (Auditors) and *SUP* 4 (Actuaries), and in the case of *firms* which are *ICVCs*, in *CIS* 10 (report and accounts) and *CIS* 14 (Termination of authorised funds). The *FSA* will regard as particularly serious any breach of *rules* which has resulted in, or is likely to result in, loss to *consumers* or ~~has resulted, or is likely to result in,~~ damage to confidence in the ~~financial markets~~ *financial system* or an increased risk that a *firm* may be used for the purposes of *financial crime*;
  - (2) ~~[deleted] the nature and seriousness of any breach of the regulations made by the Treasury under section 342(5) (Information given by auditor or actuary to the FSA) and 343(5) (Information given by auditor or actuary to the FSA: persons with close links) of the Act. [The FSA will issue further guidance when these regulations are finalised.] When considering the nature and seriousness of any breach of the duty to disclose information to the FSA the following factors may be considered:~~
    - (a) ~~whether the information related to the fitness and propriety of approved persons;~~
    - (b) ~~whether the information related to a firm's financial soundness;~~
    - (c) ~~whether the information or other circumstances indicated that the firm was in breach, or is likely to breach, any requirement imposed on it by or under the Act;~~
    - (d) ~~whether, in the case of an auditor, information or circumstances have precluded him from stating that the annual accounts of the firm have been properly prepared in accordance with section 235 of the Companies Act 1985;~~
    - (e) ~~whether the information or circumstances show that, in complying with any duties imposed by or under the Act, the firm or the auditor or actuary concerned has disclosed to the FSA or published false, inaccurate or misleading information;~~
  - (3) the nature and effect seriousness of any breach of the duties imposed under the *Act* referred to in *ENF* 17.3.2G ~~failure to disclose in accordance with the Treasury's regulations:~~ the *FSA* will regard as particularly serious any failure

to disclose to it information which has resulted in, or is likely to result in, loss to *consumers* and/or, ~~which has resulted in, or is likely to result in,~~ damage to ~~the integrity of the market~~ confidence in the *financial system* or an increased risk that a *firm* may be used for the purposes of *financial crime*;

- (4) action taken by the auditor or *actuary* to remedy the ~~non-disclosure~~ or breach: this may include whether the auditor or *actuary* brought the breach or ~~non-disclosure~~ to the attention of the *FSA* promptly, the degree of cooperation with the *FSA* in relation to any subsequent investigation, ~~and~~ whether remedial steps have been taken to rectify the breach or ~~non-disclosure~~ and whether reasonable steps have been taken to prevent a similar breach or ~~non-disclosure~~ from occurring;
- (5) action taken by ~~*designated professional bodies*~~ professional bodies: the *FSA* will consider whether any disciplinary action has been or will be taken against the auditor or actuary by a relevant ~~*designated professional body*~~ professional body and whether that action adequately addresses the particular breach of duty;
- (6) the previous compliance record of the auditor or actuary concerned: whether the *FSA* (or a *previous regulator*) or ~~*designated professional body*~~ professional body has imposed any previous disciplinary sanctions on the ~~*firm*~~ firm or individual concerned.

17.4.5 G When deciding whether or not to disqualify an auditor under section 249(1) of the *Act* (Disqualification of auditor for breach of trust scheme rules), and in setting the disqualification, the *FSA* will take into account all the circumstances of the case. These may include, but are not limited to, the following circumstances:

- (1) the effect of the auditor's breach of a duty imposed by *trust scheme rules*: the *FSA* will regard as particularly serious a breach of a duty imposed by trust scheme rules (set out in *CIS 10* (Report and accounts) and *CIS 14* (Termination of authorised funds)) which has resulted in, or is likely to result in, loss to *consumers* or ~~has resulted in, or is likely to result in,~~ damage to ~~the integrity of the financial markets~~ confidence in the *financial system* or an increased risk that a *firm* may be used for the purposes of *financial crime*;

...

- (3) action taken by a relevant ~~*designated professional body*~~ professional body: the *FSA* will consider whether any disciplinary action has or will be taken against the auditor by a ~~*designated professional body*~~ professional body and whether such action adequately addresses the particular breach of a duty imposed by *trust scheme rules*;
- (4) the previous compliance record of the auditor concerned: whether the *FSA* (or a *previous regulator*) or ~~*designated professional body*~~ professional body has imposed any previous disciplinary sanctions on the ~~*firm*~~ firm or individual concerned.

...

17.5.2 G The *FSA* will remove a disqualification if it is satisfied that the disqualified *person* will in future comply with the duty in question (and other duties under the *Act*). When it considers whether to grant or refuse a request that a disqualification be removed on these grounds, the *FSA* will take into account all the circumstances of a particular case. These circumstances may include, but are not limited to:

(1) the seriousness of the breach of duty ~~or non-disclosure~~ that resulted in the disqualification;

...

(3) any steps taken by the auditor or *actuary* after the disqualification to remedy the factors which led to the disqualification and any steps taken to prevent a similar breach of duty ~~or non-disclosure~~ from happening again.

...

17.6.1 G A disqualification will come into effect on the date stated in the ~~*decision*~~ *final notice*. ~~unless the decision is referred to the *Tribunal*.~~

**DECISION MAKING MANUAL (AMENDMENT NO 3) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

**Commencement**

- B. This instrument comes into force on 1 September 2003.

**Amendments to the Decision making manual**

- C. The Decision making manual is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Decision Making Manual (Amendment No 3) Instrument 2003.

By order of the Board  
17 July 2003



## Annex

### Amendments to the Decision making manual

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 3 Annex 1 G

##### Statutory notice procedure: Supervisory notice procedure

1 Table List of supervisory notices and decision notices under the Act (other than Part VI)

<u>Section of the Act</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
...			
259(3)/(8)/(9) (b)	...	...	...
268(3)/(7)(a)/ (9)(a) (as a result of (8)(b)/(13))	when the <i>FSA</i> is <del>exercising its power</del> <u>proposing /deciding to give or, on its own</u> <u>initiative, to vary a direction to the</u> <i>operator of a recognised scheme ...</i>	<i>ENF 16</i>	<i>RDC</i>
282 (3)/(6)/(7)(b) ...	...	...	...

**COMPLAINTS SOURCEBOOK (AMENDMENT) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 157 (Guidance);
  - (4) section 226 (Compulsory jurisdiction); and
  - (5) paragraph 13 of Schedule 17 (Authority’s procedural rules).
- B. The rule making powers listed above are specified for the purposes of section 153(2) of the Act (Rule making instruments).

**Commencement**

- C. This instrument comes into force on 1 September 2003.

**Amendments to the Complaints sourcebook (DISP)**

- D. The Complaints sourcebook (DISP) is amended in accordance with the Annex A to this instrument.

**Amendments to the Glossary**

- E. The Glossary is amended in accordance with Annex B to this instrument

**Citation**

- F. This instrument may be cited as the Complaints Sourcebook (Amendment) Instrument 2003.

By order of the Board  
17 July 2003

## Annex A

### Amendments to the Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.2.9 R A *firm* must:

- (1) refer *eligible complainants* in writing to the availability of its internal complaint handling procedures at, or immediately after, the point of sale;
- (2) publish details of its internal complaint handling procedures, supply a copy on request to an *eligible complainant*, and supply a copy automatically ~~to the complainant~~ when it receives a complaint from an *eligible complainant* (unless the complaint is resolved by close of business on the next *business day*); and
- (3) display in each of its branches or sales offices to which *eligible complainants* have access a notice indicating that it is covered by the *Financial Ombudsman Service*.

1.3.3 R *DISP* 1.4 – *DISP* 1.5 ~~*DISP* 1.6~~ do not apply:

...

1.3.3A R In order to comply with *DISP* 1.3.3 R(2), when a complaint is received on any day other than a *business day*, or after close of business on a *business day*, a *firm* can treat the complaint as received on the next *business day*.

...

Early resolution of complaints

1.4.3A R *DISP* 1.4.4 R to *DISP* 1.4.6 R do not apply if the complainant has already indicated in writing acceptance of a response by the *firm*, provided that the response informed the complainant how to pursue his complaint if he remained dissatisfied.

1.4.3B G *DISP* 1.4.3A R recognises that the complainant may accept the *firm's* response at any time during the complaint process and that this may resolve the complaint, even when the *firm* has not issued a *final response*. The *firm's* response need not have referred to the *Financial Ombudsman Service*, but should have explained how the complaint

would be progressed by the *firm* if the complainant remained dissatisfied.

1.4.4 R A *firm* must, within four weeks of receiving a complaint, (unless ~~DISP 1.4.7R~~ DISP 1.4.3A R or *DISP 1.4.9 R* applies) send the complainant either:

...

1.4.5 R A *firm* must, by the end of eight weeks after its receipt of a complaint, (unless ~~DISP 1.4.7R~~ DISP 1.4.3A R or *DISP 1.4.9 R* applies) send the complainant either:

...

1.4.6 R Where, at *commencement*, a firm is still dealing with a complaint that is capable of being referred to the *Financial Ombudsman Service* as a *relevant new complaint*:

...

(2) it must, within eight weeks of *commencement*, send the complainant a response which satisfies *DISP 1.4.5 R*, (unless ~~DISP 1.4.7R~~ DISP 1.4.3A R or *DISP 1.4.9 R* applies).

#### **Early resolution of complaints**

1.4.7 R ~~[deleted] DISP 1.4.4R to DISP 1.4.6R do not apply if the complainant has already indicated in writing acceptance of a response by the *firm*, provided that the response informed the complainant how to pursue his complaint if he remained dissatisfied.~~

1.4.8 G ~~[deleted] DISP 1.4.7R recognises that a response by the *firm* will not necessarily be its *final response* but that it may, nonetheless, resolve the complaint.~~

...

...

2.1.3 R A reference in this chapter to a “complaint”:

(1) includes part of a complaint; and

(2) under the *Compulsory Jurisdiction* includes all or part of a relevant new complaint.

...

2.3.1 R (1) The *Ombudsman* cannot consider a complaint (except as described in (2)) if the complainant refers it to the *Financial Ombudsman Service*:

- ...
- (b) more than six months after the date on which ~~the complainant is advised by the firm or VJ participant in~~ sends the complainant its final response advising him that he may refer his complaint to the *Financial Ombudsman Service*; or

2.4.10 R A person is an *eligible complainant* if:

- ...
- (2) he has a complaint against the *firm* or *VJ participant* which either:
- (a) arises out of a relationship which he has with the *firm* or *VJ participant* as described in *DISP 2.4.11 R* or *DISP 2.4.12 R (4)*; or

2.4.11 R The relationships with the *firm* or *VJ participant* relevant for *DISP 2.4.10 R(2)(a)* are:

- ...
- (3) the complainant is the true owner or the *person* entitled to immediate possession of a cheque or other bill of exchange, or of the funds it represents, collected by the *firm* or *VJ participant* for someone else's account; or

2.4.12 R The circumstances relevant for *DISP 2.4.10 R(2)(b)* are:

- ...
- (3) that the complainant is a *person* on whom the legal right to benefit from a claim under a *contract of insurance* has been devolved by contract, statute or subrogation; or
- (4) that the complainant is the beneficial owner of units in a collective investment scheme, and the firm or VJ participant is the operator or depositary of the scheme.

2.4.13 G *DISP 2.4.12 R(2)* and (3) include, for example, employees covered by a group permanent health policy taken out by an employer, which provides in the insurance contract that the policy was taken out for the benefit of the employee. They do not include, for example, complaints about the actions of the insurer of the other driver in a car accident.

2.6.6 G For the purposes of *DISP 2.6.1 R(5)*, ancillary banking services include, for example, the provision and operation of cash machines, ~~and~~ safe deposit boxes and the provision of account aggregation

services (that is, services where details from several accounts which may be held by different financial services providers can be accessed by a single password).

...

3.1.4 R Except as otherwise specified, references in this chapter to a “complaint” include:

- (1) a *relevant new complaint*; and
- (2) part of a complaint or a *relevant new complaint*.

## ANNEX B

### Amendments to the Handbook Glossary

In this Annex, underlining indicates new text and striking through indicates deleted text.

<i>chargeable case</i>	<p>any complaint referred to the <i>Financial Ombudsman Service</i>, <del>apart from those</del> <u>except</u> where:</p> <p>(a) the <i>Ombudsman</i> considers it apparent from the complaint, <u>when it is</u> received, and from any <i>final response</i> which has been issued by the <i>firm</i>, that the complaint should not proceed because:</p> <p><del>(a)(i)</del> the complainant is not an <i>eligible complainant</i> in accordance with <i>DISP 2</i>; or</p> <p><del>(b)(ii)</del> the complaint does not fall within the jurisdiction of the <i>Financial Ombudsman Service</i> (as described in <i>DISP 2</i>); or</p> <p><del>(c)(iii)</del> the <i>Ombudsman</i> considers that the complaint should be dismissed without consideration of its merits under <i>DISP 3.3</i> (Dismissal of complaints without consideration of the merits); or</p> <p><del>(d)(b)</del> the <i>Ombudsman</i> considers, at any stage, that the complaint should be dismissed under <i>DISP 3.3.1R(2)</i> on the grounds that it is frivolous or vexatious.</p>
<i>Compulsory Jurisdiction</i>	<p>the jurisdiction of the <i>Financial Ombudsman Service</i> to which <i>firms</i> (and certain <i>unauthorised persons</i> as a result of the <i>Ombudsman Transitional Order</i> <u>or section 226(2)(b) and (c) of the Act</u>) are compulsorily subject.</p>

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK  
(AMENDMENT NO 3) INSTRUMENT 2003**

**Powers exercised**

A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in:

(1) the following sections of the Financial Services and Markets Acts 2000 (the "Act"):

- (a) section 138 (General rule-making power);
- (b) section 156 (General supplementary powers);
- (c) section 247 (Trust scheme rules); and
- (d) section 248 (Scheme particulars rules); and

(2) regulation 6 (FSA rules) of the Open-Ended Investment Companies Regulations 2001.

B. The rule-making powers identified above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

C. This instrument comes into force on 1 September 2003.

**Amendments to the Collective Investment Schemes sourcebook**

D. The Collective Investment Schemes sourcebook is amended in accordance with Annex A to this instrument.

**Amendment to the Glossary**

E. The Glossary is amended in accordance with Annex B to this instrument.

**Citation**

F. This instrument may be cited as the Collective Investment Schemes Sourcebook (Amendment No 3) Instrument 2003.

By order of the Board  
17 July 2003



## Annex A

### Amendments to the Collective Investment Schemes sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 5.2.10 R ...  
(2) *Transferable securities* and money market instruments held within a *scheme* must (subject to (3) and (4)) be:
- (a) admitted to or *dealt* on an *eligible* market within *CIS* 5.2.12R(1)(a) (Eligible markets: requirements); or
  - (b) *dealt* on an *eligible* market within *CIS* 5.2.12R(1) (b); ~~or~~
  - (c) *dealt on an eligible market within CIS 5.2.12R(2); or*
  - (d) *in the case of a money-market instrument not within (a) to (c) above, within CIS 5.2.20R(2).*
- ...
- ...
- 5.2.15 R A *scheme* may invest in *units* in a *collective investment scheme* provided that no more than 30% of the value of that investing scheme is in *collective investment schemes* which are not *UCITS schemes* *schemes which comply with the conditions necessary in order to enjoy the rights conferred by the UCITS Directive* and only if the second *scheme* is permitted under (1) - (4):
- ...
- ...
- 5.2.20 R A *UCITS scheme* may invest in money market instruments which are ~~normally~~ dealt in on the money market, are liquid and whose value can be accurately determined at any time, provided:
- (1) the money market instrument is ~~listed on or normally dealt on an eligible market~~ *within CIS 5.2.10R(2)(a)-(c); or*
- ...
- ...
- 5.3.4 R (1) Cash obtained from borrowing, and borrowing which the *authorised fund manager* reasonably regards *as an eligible institution* or an *approved bank* to be committed to provide, *is are not available for cover under CIS 5.3.3R (Cover for transactions in derivatives and forward transactions), as long as the normal limits on borrowing (as to which see CIS 5.5.3R (General power to borrow) and CIS 5.5.4R (Borrowing limits)) are observed. save in compliance with (2).*

(2) Where, for the purposes of this section (*CIS 5.3*), the *ICVC* or the *trustee* for the account of the *AUT* on the instructions of the *manager*:

(a) borrows an amount of currency from an *eligible institution* or an *approved bank*; and

(b) keeps an amount in another currency, at least equal to the borrowing for the time being in (a), on *deposit* with the lender (or his agent or nominee);

~~then this section (*CIS 5.3*) applies as if the borrowed currency, and not the deposited currency, were part of the *scheme property*; and the normal limits on borrowing under *CIS 5.5.3* and *CIS 5.5.4* do not apply to that borrowing.~~

...

5A.11.4 R (1) *A fund of funds scheme* may invest in *units* in any five or more *authorised funds* within any one of *CIS 5 (UCITS schemes)*, *CIS 5A.4 (Securities schemes)*, *CIS 5A.5 (Money market schemes)*, *CIS 5A.6 (Futures and options schemes)*, *CIS 5A.7 (Geared futures and options schemes)*, *CIS 5A.8 (Property schemes)* ~~and~~ or *CIS 5A.9 (Warrant schemes)*.

...

14.2.5 R (1) In this chapter the "effective time" means the time at which the conditions referred to in *CIS 14.2.3R (2)(a)* ~~and *CIS 14.2.3R (b)*~~ are satisfied or, if later, the time, determined in accordance with *CIS 14.2.3R(3)*, at which the *ICVC* must be wound up.

## Annex B

### Amendment to the Glossary

*near cash*

*money, deposits or investments* which, in each case, fall within any of the following:

- (a) *money* which is deposited with an *eligible institution* or an approved bank in:
  - (i) a current account; or
  - (ii) a deposit account, if the *money* can be withdrawn immediately and without payment of a penalty exceeding seven *days'* interest calculated at ordinary commercial rates;
- (b) certificates of deposit issued by an *eligible institution* or an approved bank if immediately redeemable at the option of the holder;

...

**SPECIAL GUIDE FOR SMALL FRIENDLY SOCIETIES (AMENDMENT)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

**Commencement**

- B. This instrument comes into force on 31 March 2004.

**Amendment to the Special guide for small Friendly societies**

- C. The Special guide for Small Friendly Societies is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Special Guide for Small Friendly Societies (Amendment) Instrument 2003.

By order of the Board  
17 July 2003

## Annex

### Amendments to FREN

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.2.2 G Table Table: Parts of the Handbook applicable to small friendly societies.

	<b>Part of Handbook</b>	<b>Applicability to small friendly societies</b>
	Conduct of Business sourcebook ( <i>COB</i> )	The following parts of <i>COB</i> are relevant to small friendly societies: (a) <i>COB</i> 1 (Application and general provisions) (b) <i>COB</i> 2 (Rules which apply to firms conducting designated investment business) (c) <i>COB</i> 3 (Financial promotion) (d) <i>COB</i> 4 (Accepting customers) (e) <i>COB</i> 5 (Advising and selling) (f) <i>COB</i> 6 (Product disclosure and the customer's right to cancel or withdraw) <u>but not <i>COB</i> 6.10 (Principles and Practices of Financial Management (PPFM)) or <i>COB</i> 6.11 (Reporting to with-profits policyholders on compliance with PPFM)</u>

**INTERIM PRUDENTIAL SOURCEBOOK FOR FRIENDLY SOCIETIES  
(SOLVENCY I DIRECTIVE) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 138 (General rule-making power);
  - (2) section 150(2) (Actions for damages);
  - (3) section 156 (General supplementary powers); and
  - (4) section 157 (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 January 2004 and:
- (1) except as provided in (2), applies to friendly societies, in each case for and from the first day of their respective financial years beginning on 1 January 2004 and during that calendar year;
  - (2) IPRU(FSOC) rules 5.1(5) and 5.2(10) apply to friendly societies for their respective financial years ending on dates between 31 December 2003 and 30 December 2004, inclusive.

**Amendment of the Interim Prudential sourcebook for friendly societies**

- D. IPRU(FSOC) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Interim Prudential Sourcebook for Friendly Societies (Solvency I Directive) Instrument 2003.

By order of the Board  
18 September 2003

## Annex

### Amendments to the Interim Prudential sourcebook for friendly societies

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 4.2 (1) Subject to (2) to ~~(4)~~ (7), the ~~required margin of solvency~~ must be determined –
- (a) with respect to a *friendly society* which carries on *long-term insurance business*, in accordance with Appendix 1; and
  - (b) with respect to a *friendly society* which carries on *general insurance business*, by taking the greater of:
    - (i) the higher of the two sums resulting from the application of the method of calculation set out in Part I of Appendix 2, and
    - (ii) the ~~two sums~~ sum resulting from the application of the ~~two methods~~ method of calculation set out in ~~Parts I and~~ Part II of Appendix 2.
- (2) For a *contract of insurance* to which rule 7.6(a) applies, the ~~required margin of solvency~~ must be determined by taking the aggregate of the results arrived at by applying –
- (a) in the case of so much of the contract as is within any *class of long-term insurance business*, the appropriate method under Appendix 1 for that class; and
  - (b) in the case of so much of the contract as is within *general insurance business class 1 or 2*, the method of calculation set out in ~~Part I of Appendix 2 (excluding 6, 7 and 8)~~ (1)(b).
- (3) Where a *friendly society* carries on *long-term insurance business* and owing to the nature of that business more than one ~~margin of solvency~~ margin of solvency is produced in respect of that business by the operation of these rules, the margins in question must be aggregated.
- (4) Where a *friendly society* carries on both *long-term insurance business* and *general insurance business* and is accordingly required to maintain separate ~~margins of solvency~~ margins of solvency in respect of the two kinds of business–
- (a) the provisions in (1) to (3) apply for determining the ~~margin of solvency~~ margin of solvency for each kind of business separately; and
  - (b) assets other than those representing the funds maintained by the *friendly society* in respect of its *long-term insurance business*, if they are not included among the assets covering the liabilities and the *required margin of solvency* relating to the *friendly society's general insurance business*,

may be included among the assets taken into account in covering the liabilities and the *required margin of solvency* for the *friendly society's long-term insurance business*.

(5) Subject to (6), in each case in which (1)(b) applies, if the *margin of solvency* under (1)(b) is lower than the *required margin of solvency* of the preceding *financial year*, then the *margin of solvency* must be adjusted so it is at least equal to the *required margin of solvency* of the preceding *financial year* multiplied by the ratio of the amount of the *technical provisions* for *claims* outstanding at the end of the preceding *financial year* and the amount of the *technical provisions* for *claims* outstanding at the beginning of the preceding *financial year*.

(6) For the purpose of (5) -

(a) *technical provisions* must not be discounted, or reduced, to take account of investment income, unless -

(i) they relate to risks in *classes* 1 or 2; or

(ii) they are reduced to reflect the discounting of annuities; and

(b) *technical provisions* must be calculated net of reinsurance; but

(c) the ratio must not be higher than 1.

(7) Where the nature or quality of reinsurance relied on to reduce the *required margin of solvency* changes significantly during the *financial year*, a *friendly society* must notify the *FSA* forthwith of the change.

...

4.4 (1) Subject to (2) ~~and (3)~~ to (5), one-third of the *required margin of solvency* constitutes the guarantee fund. A *friendly society* must ensure that its *margin of solvency* does not fall below the guarantee fund.

(2) In the case of a *friendly society* which is-

(a) an *incorporated friendly society*; or

(b) an (unincorporated) *friendly society*, which is ~~not~~ a ~~non~~-*directive friendly society*,

the *guarantee fund* must not be less than an amount (the minimum guarantee fund) arrived at in accordance with rule 4.5 for *long-term insurance business* and rule 4.6 for *general insurance business*, whether the *required margin of solvency* is greater or less than that amount.

(3) In the case of *long-term insurance business*, items that are not *implicit items* must be at least large enough to cover either the *minimum guarantee fund* or 50% of the *guarantee fund*, whichever is the greater.



~~(4)~~ In the case of *general insurance business*, the unpaid initial fund of a *friendly society* and, in the case of a *friendly society* with variable contributions, any claim which the *friendly society* has against its members by way of a call for supplementary contributions for a *financial year* may not be taken into account in complying with (1).

~~(5)~~ In the case of *long-term insurance business*, the unpaid initial fund of a *friendly society* and *implicit items* which relate to future profits and *zillmerising* may not be taken into account in complying with (1).

4.5 (1) Subject to (2) to (4) and to rule 4.6(3), the *minimum guarantee fund* for *long-term insurance business* carried on by a *directive friendly society* is 2,250,000 Euro.

~~(1)~~ (2) For a *non-directive incorporated friendly society*, in the *financial year* during which a the *friendly society* first obtains permission under the *Act* ~~(or is authorised under its predecessor legislation)~~ to carry on *long-term insurance business*, the *minimum guarantee fund* is the amount in column 2 of the table, which corresponds to the *friendly society's annual contribution income* in respect of that business in the last preceding *financial year*, as shown in column 1 of the table.

Contribution Income (in Euro)	<i>Minimum guarantee fund</i> (in Euro)
1,000,000 or less	100,000
1,000,001 - 1,500,000	200,000
1,500,001 - 2,000,000	300,000
2,000,001 - 2,500,000	400,000
2,500,001 - 3,000,000	500,000
3,000,001 or more	600,000

But where a the *friendly society* had no *annual contribution income* in respect of *long-term insurance business* in the last preceding *financial year* or has not been in existence long enough to have a preceding *financial year*, the *minimum guarantee fund* is 100,000 Euro.

~~(2)~~ (3) In any subsequent *financial year* during which a *non-directive incorporated friendly society* has permission to carry on *long-term insurance business*, the *minimum guarantee fund* is the greater of either -

(a) the amount in column 2 of the table in (1) that corresponds to the *friendly society's annual contribution income* in respect of *long-term insurance business* in the last preceding *financial year*; or

(b) the amount of the *minimum guarantee fund* required to be maintained by the *friendly society* in the last preceding *financial year*;

~~providing that if the amount referred to in (a) or (b) is the same, the *minimum guarantee fund* is that amount.~~

~~(3)~~ (4) Where a *non-directive incorporated friendly society* obtains permission under the *Act* ~~(or has obtained permission under the *Act* or authorisation under its predecessor legislation)~~ to carry on *long-term insurance business* -

- (a) of a *class* additional to that in respect of which it already has permission;  
or
- (b) in a part of the United Kingdom additional to that in respect of which it already has permission,

a *minimum guarantee fund* of 600,000 Euro must be maintained by that *friendly society* for the whole of its *long-term insurance business* (that is to say, not only for the additional business carried on but also for the business previously carried on).

4.6 (1) ~~Subject to (2) and (3), the~~ The *minimum guarantee fund* in respect of *general insurance business* carried on by a *directive friendly society* is ~~225,000~~ 1,500,000 Euro.

(2) ~~For *non-directive incorporated friendly societies*, the *minimum guarantee fund* for *general insurance business* is 225,000 Euro.~~

(3) ~~Subject to (4) and (5), the base amount in Euro specified in (1) and in Appendix 2 will increase each year, starting on the first review date of 20 September 2003 (and annually after that), by the percentage change in the European index of consumer prices (comprising all EU member states as published by Eurostat) from 20 March 2002 to the relevant review date, rounded up to a multiple of 100,000 Euro.~~

(4) ~~In any year, if the percentage change since the last increase is less than 5%, then there will be no increase.~~

(5) ~~The increase will take effect 30 days after the EU Commission has informed the European Parliament and Council of its review and the relevant percentage change.~~

4.7 (1) Where a *friendly society* has assets equal to or in excess of its liabilities as valued in accordance with the *asset valuation rules* and *liability valuation rules*, then (2) ~~and (3)~~ (5) have effect for determining the extent to which the value of the assets exceeds the amount of liabilities in connection with the *margin of solvency*, the *required margin of solvency*, the *guarantee fund* and the *minimum guarantee fund*.

(2) In the case of a *friendly society* with variable contributions carrying on ~~of~~ *general insurance business*, any claim which a *friendly society* has against its members by way of a call for supplementary contributions for a *financial year* must be treated as having no value ~~must be treated as having its full value for that *financial year*, but the value must not exceed~~

(a) ~~50% of the difference between the maximum contributions and the contributions called in; or~~

- (b) ~~50% of the *required margin of solvency* which would otherwise be required.~~
- (3) The items which relate to future surpluses, *zillmerising* and hidden reserves (referred to as implicit items) must be treated as having no value. A *friendly society* which applies for a waiver of this rule under section 148 of the *Act* with respect to future profits must submit with the application for waiver:
- (a) an actuarial report substantiating the likelihood of the emergence of the future profits in the future; and
- (b) a plan as to how it intends to comply with the future limits on, and termination of use of, implicit items for future profits required by the *Life Directive (2002/83/EC)*.
- (4) The unpaid initial fund of a *friendly society* must be treated as having no value.
- (5) Subject to (6), in the case of a *friendly society* which discounts or reduces its *technical provisions* for *claims* outstanding to take account of investment income as permitted by article 60(1)(g) of the *Insurance Accounts Directive*, the *margin of solvency* must be reduced by the difference between: -
- (a) the undiscounted *technical provisions* for *claims* outstanding or the *technical provisions* for *claims* outstanding before deductions; and
- (b) the discounted *technical provisions* for *claims* outstanding or the *technical provisions* for *claims* outstanding after deductions.

For these purposes, *technical provisions* must be calculated net of *reinsurance*.

- (6) (5) does not apply to risks in *classes 1* or *2* or in respect of the discounting of *annuities*.
- (4)-(7) For the purposes of the rules in Chapter 4 and the definition of *non-directive friendly society*, the exchange rate from the Euro to the pound sterling for each year beginning on 31 December is the rate applicable on the last day of the preceding October for which the exchange rates for the currencies of all the European Union member states were published in the Official Journal of the European Communities.

...

5.1 ...

- (5) A *friendly society* that submits an FSC1 return in respect of the *financial year* ending on 31 December 2003 must also send to its normal supervisory contact at the *FSA*, by 30 June 2004, Form 60 and associated Forms 11 and 12 as amended by the *Interim Prudential Sourcebook for Friendly Societies (Solvency I Directive) Instrument 2003*.

...

5.2 ...

(10) A friendly society that submits an FSC3 return in respect of the financial year ending on 31 December 2003 must also send to its normal supervisory contact at the FSA, by 30 June 2004: -

(a) Forms 11 and 12 as amended by the Interim Prudential Sourcebook for Friendly Societies (Solvency I Directive) Instrument 2003; and

(b) the amounts at line 12 of amended Form 15 and line 61 of amended Form 13, if these lines contain amounts different from the amounts at the same lines of the un-amended forms.

...

5.9 The valuation abstract must consist of Forms 46 to 49, 51 to 58, 60, 11, 12 and 61A (as appropriate) prepared in accordance with the instructions in Appendix 9.

...

7.1 ...

<u>gross premiums earned in respect of a financial year</u>	<u>means such proportion of gross premiums receivable as is attributable to risk borne by the friendly society during that financial year;</u>
<u>margin of solvency</u>	<u>has the meaning given in rule 4.1(4);</u>
<u>non-directive friendly society</u>	<u>means:</u> <u>(1) a friendly society whose insurance business is restricted to the provision of benefits which vary according to the resources available and in which the contributions of the members are determined on a flat-rate basis;</u>  <u>(2) a friendly society whose long-term insurance business is restricted to the provision of benefits for employed and self-employed persons belonging to an undertaking or group of undertakings, or a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity (whether or not the commitments arising from such operations are fully covered at all times by mathematical reserves);</u>  <u>(3) a friendly society which undertakes to provide benefits solely in the event of death where the</u>

	<p><u>amount of such benefits does not exceed the average funeral costs for a single death or where the benefits are provided in kind;</u></p> <p><u>(4) a mutual (carrying on long-term insurance business) –</u></p> <p><u>(a) whose articles of association contain provisions for calling up additional contributions from members or reducing their benefits or claiming assistance from other persons who have undertaken to provide it; and</u></p> <p><u>(b) whose annual gross premium income (other than from contracts of <del>reinsurance</del> reinsurance) has not exceeded 500,000 5 million Euro for each of the three preceding financial years;</u></p> <p><u>(5) a friendly society (carrying on general insurance business) whose –</u></p> <p><u>(a) registered rules contain provisions for calling up additional contributions from members or reducing their benefits;</u></p> <p><u>(b) gross premium income (other than from contracts of <del>reinsurance</del> reinsurance) for the preceding financial year did not exceed 1,000,000 5 million Euro; and</u></p> <p><u>(c) members provided at least half of that gross premium income;</u></p> <p><u>(6) a friendly society whose liabilities in respect of general insurance contracts are fully reinsured with or guaranteed by other mutuals (including friendly societies),</u></p> <p><u>and whose insurance business is limited to that described in paragraphs (1) to (6);</u></p>
<p><i>required margin of solvency</i></p>	<p><u>has the meaning given in means the margin of solvency required by rule 4.1(1);</u></p>

Appendix 1  
Long-term insurance business: margin of solvency

...

2. ...

(3) In so far as -

(a) *a friendly society* bears no investment risk; and

~~(b) the total expired and unexpired term of the relevant contract exceeds five years; and~~

~~(e)~~(b) the allocation to cover *management expenses* in the relevant contract has a fixed upper limit which is effective as a limit for a period exceeding five years,

the first calculation must be applied, but as if 1(2)(a) contained a reference to 1% instead of 4%.

~~(4) In so far as -~~

~~(a) *a friendly society* bears no investment risk; and~~

~~(b) the allocation to cover *management expenses* in the relevant contract does not have a fixed upper limit which is effective as a limit for a period exceeding five years.~~

the margin of solvency is an amount equivalent to 25% of the preceding financial year's net administrative expenses pertaining to such business.

~~(4) If neither (2) nor (3) applies, then, subject to (5), the *required margin of solvency* is zero.~~

(5) Where a *friendly society* covers a death risk, a sum arrived at by applying the second calculation (disregarding 1(4) and (5)) must be added to the ~~margin of solvency~~ *margin of solvency*, including a ~~required margin of solvency~~ *required margin of solvency* of zero, arrived at under (2), (3) or (4).

3. (1) For *long-term insurance business* of class IV ~~or VI~~, the ~~margin of solvency~~ *margin of solvency* must be determined by applying the first calculation plus the sum arrived at by applying rule 4.2(1)(b) as though it were *general insurance business* of class 2.

(2) For *long-term insurance business* of class VI, the ~~margin of solvency~~ *margin of solvency* must be determined by applying the first calculation.

~~(3) If both (1) and rule 4.2(2)(b) apply, a single combined *margin of solvency* must be calculated under rule 4.2(1)(b) in respect of the *class IV* business and subsidiary provisions in *classes 1 and 2.*~~

## Appendix 2

### General insurance business solvency margin

## Part I: the Premiums Basis

---

1. The *gross premiums receivable* (or contributions, as the case may be) in respect of the *friendly society's* entire *general insurance business* for the last preceding *financial year* must be aggregated and the method of calculation set out in 2 to 14 applied.
- 1A. The *gross premiums earned* (or contributions, as the case may be) in respect of the *friendly society's* entire *general insurance business* for the last preceding *financial year* must be aggregated and the method of calculation set out in 2 to 14 applied.
2. From each of the aggregates arrived at under 1 and 1A there must be deducted -
  - (a) any taxes included in the *premiums* ~~mentioned in 1~~; and
  - (b) any levies that are related to *premiums* and are recorded in the *friendly society's* books as payable in the last preceding *financial year* in respect of *general insurance business*.
3. The amount arrived at under 2 must be multiplied by 12 and divided by the number of months in the *financial year*.
4. Subject to rule 4.6(3), if ~~If~~ the amount arrived at under 3 is more than ~~40~~ 50 million Euro, it must be divided into two portions, the former consisting of ~~40~~ 50 million Euro and the latter comprising the excess.
5. Where there has been a division into two portions pursuant to 4, there must be calculated and added together 18% and 16% of the two portions respectively; and where there has been no such division, there must be calculated 18% of the amount arrived at under 3.
6. In the case of *general insurance business* consisting of health insurance based on actuarial principles, 5 applies with the substitution of 6% for 18% and 5 and one-third % for 16%, but only if all the necessary conditions are satisfied.
7. For the purposes of 6, the necessary conditions are as follows -
  - (a) the *gross premiums* ~~receivable~~ paid are calculated on the basis of sickness tables appropriate to the *insurance business*;
  - (b) the reserves include provision for increasing age or, in the case of class IV, either the reserves include provision for increasing age, or the business is conducted on a group basis;
  - (c) an additional *premium* is collected in order to set up a safety margin of an appropriate amount;
  - (d) ~~it is not possible for the friendly society to cancel the contract~~ does not allow the friendly society to cancel the contract after the end of the third year of the contract; and

- (e) the contract provides for the possibility of increasing *premiums* or reducing payments during its currency.
8. Where 6 applies to a *friendly society* whose *general insurance business* consists partly of health insurance based on actuarial principles and partly of other business, the procedure provided in 1 to 6 must operate separately for each part of the *general insurance business*, so as to produce a sum under 6 for the health insurance and a sum under 5 for the other business.
9. (1) If the provision for *claims* outstanding at the end of the last preceding *financial year* exceeds the provision for *claims* outstanding at the beginning of ~~that year~~ the financial year two years prior to the last preceding financial year, then the amount of the excess must be added to the amount of *claims* paid in the ~~last preceding financial year~~ 3 year period.
- (2) If the provision for *claims* outstanding at the beginning of the ~~last preceding financial year~~ two years prior to the financial year in question exceeds the provision for *claims* outstanding at the end of ~~that year~~ the financial year in question, then the amount of the excess must be deducted from the amount of *claims* paid in the ~~last preceding financial year~~ 3 year period.
10. (1) For the purposes of 9, the “amount of *claims* paid”, in relation to a *friendly society* and a *financial year*, is the amount that is recorded in the *friendly society*’s books as at the end of the *financial year* as paid by it (whether or not payment has been effected in that year) in full or partial settlement of -
- (a) the *claims* described in (2); and
- (b) the expenses described in (3),
- less any *recoverable* amounts within the meaning of (4).
- (2) The *claims* mentioned in (1) are *claims* including *claims* relating to business accounted for over a longer period than a *financial year*.
- (3) The expenses mentioned in (1) are expenses (such as, for example, legal or medical costs) which are incurred by the *friendly society*, whether through the employment of its own staff or otherwise, and are directly attributable to the settlement of individual *claims*, whether or not the individual *claims* in question are those mentioned in (1).
- (4) *Recoverable* amounts for the purposes of (1) are amounts *recoverable* by the *friendly society*, in respect of the *claims* mentioned in (1) or other *claims*, including amounts *recoverable* from third parties and amounts *recoverable* from other *insurance undertakings* but excluding amounts *recoverable* in respect of reinsurance ceded by the *friendly society*.
11. (1) For the purposes of 9, the “provisions for *claims* outstanding”, in relation to a *friendly society* and a *financial year*, is the amount set aside by the *friendly society* as at the beginning or end of the *financial year* as being an amount likely to be sufficient to meet -



- (a) the *claims* described in (2); and
- (b) the expenses described in (3),

less any *recoverable* amounts within the meaning of (4).

- (2) The *claims* mentioned in (1) are *claims* in respect of incidents occurring -
  - (a) in the case of an amount set aside as at the beginning of the *financial year*, before the beginning of that year; and
  - (b) in the case of an amount set aside as at the end of the *financial year*, before the end of that year,

being *claims* which have not been treated as *claims* paid including *claims* relating to business accounted for over a longer period than a *financial year*, *claims* the amounts of which have not been determined and *claims* arising out of incidents that have not been notified to the *friendly society*.

- (3) The expenses mentioned in (1) are expenses (such as, for example, legal or medical costs) which are likely to be incurred by the *friendly society*, whether through the employment of its own staff or otherwise and are directly attributable to the settlement of individual *claims*, whether or not the individual *claims* in question are those mentioned in (1).
- (4) ~~‘Recoverable amounts’~~ *Recoverable* amounts for the purposes of (1) are amounts estimated by the *friendly society* to be *recoverable* by it in respect of the *claims* mentioned in (1), including amounts *recoverable* from third parties and amounts *recoverable* from other *insurance undertakings* but excluding amounts *recoverable* in respect of reinsurance ceded by the *friendly society*.

12. From the amount determined under 9(1) or (2) there must be deducted the total sum *recoverable* in respect of that amount under reinsurance contracts ceded during the relevant period.

13. The amount determined under 12 must be expressed as a percentage of the amount determined under 9(1) or (2).

14. The sum arrived at under 5 or 6 or the aggregate of the sums arrived at under 5 and 6, as the case may be, must be multiplied -

- (a) where the percentage arrived at under 13 is greater than 50% but not greater than 100%, by the percentage so arrived at;
- (b) where the percentage so arrived at is greater than 100%, by 100%; and
- (c) in any other case, by 50%.

## **Part II: the Claims Basis**

15. If a *friendly society* has not been in existence long enough to acquire a *reference period*, this Part II does not apply to the *friendly society*, and Part I must be applied.
16. (1) If the provision for *claims* outstanding at the end of the *reference period* exceeds the provision for *claims* outstanding at the beginning of the *reference period*, the amount of the excess must be added to the amount of *claims* paid in the *reference period*.
- (2) If the provision for *claims* outstanding at the beginning of the *reference period* exceeds the provision for *claims* outstanding at the end of the *reference period*, the amount of the excess must be deducted from the amount of *claims* paid in the *reference period*.
- (3) For the purposes of this paragraph, the expressions “amount of *claims* paid” and “provision for *claims* outstanding” have, in relation to a *reference period*, the same meaning as they have in 9 in relation to a *financial year*.
17. The aggregate obtained under 16(1) or (2) must be divided by the number of months in the *reference period* and multiplied by twelve.
18. Subject to rule 4.6(3), if If the amount arrived at under 17 is more than ~~7~~ 35 million Euro, it must be divided into two portions, the former consisting of ~~7~~ 35 million Euro and the latter comprising the excess.
19. Where there has been a division into two portions pursuant to 18, there must be calculated and added together 26% and 23% of the two portions respectively; and where there has been no such division, there must be calculated 26% of the amount arrived at under 17.
20. In the case of *general insurance business* consisting of health insurance based on actuarial principles, 19 applies with the substitution of “8 2/3%” for “26%” and “7 2/3%” for “23%”, but only if all the necessary conditions are satisfied.
21. The necessary conditions for the purposes of 20 are the same as those set out in 7.
22. In a case of the kind mentioned in 8, that paragraph applies (with the necessary modifications) so as to produce separate sums under 19 and 20.
23. The sum arrived at under 19 or 20 or the aggregate of the sums arrived at under 19 or 20, as the case may be, must be multiplied by the same percentage as is applicable for the purposes of 14.

## Appendix 9

Abstract of actuarial investigation

...

**Forms ~~60 and 61~~, 11 and 12**

24. (1) A statement of the *required minimum margin* for *long-term insurance business* in Form 60 and of the required *margin of solvency* for Class IV business and the subsidiary provisions in Forms 11 and 12, in accordance with instruction 8 for completion of Form 60 ~~61~~.
- (2) If the gross annual office *premiums* for Class IV business and the subsidiary provisions in force on the *valuation date* do not exceed 1% of the gross annual office *premiums* in force on that date for all *long-term insurance business*, Forms ~~61-11 and 12~~ need not be completed provided it can be stated that the entry in line 51 of Form 60 exceeds the amount that would be obtained if Forms ~~61-11 and 12~~ were to be completed. In this circumstance, the method of estimating the entry in line 51 of Form 60, together with a statement of the gross annual office *premiums* in force at the *valuation date* in respect of for Class IV business and the subsidiary provisions, must be given. When completing Forms 11 and 12, the accounting conventions appropriate for general insurance business should be followed, but reasonable approximations may be used if they are unlikely to result in an underestimate of the required margin of solvency.

Appendix 10 (Prudential Reporting Forms) is amended as follows:-

### Prudential Reporting Forms

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In Appendix 10 (Prudential reporting forms), FSC 1 – Form 60 is amended and Form 61 is deleted and FSC 3 – Form 11 is replaced and Form 12 is amended as follows:

**FSC 1 – FORM 60 (Sheet 1)**

**Returns under the Friendly Societies Prudential Rules**

Long term insurance business: Required minimum margin

Name of Society

Period ended 31 December

	<b>Reg No</b>	<b>Units</b>
<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>
		£/£000

Class	Classes I & II	Class III business with relevant factor of				Class IV	Class VI	Class VII business with relevant factor of				Unallocated additional mathematical reserves with relevant factor of		Total for all classes	
Relevant factor (Note 1)	4% 1	4% 2	1% 3	<u>NH</u> <u>Expense</u> <u>related</u> 4	Total 5	4% <u>6</u>	4% <u>6A</u>	4% 7	1% 8	<u>NH</u> <u>Expense</u> <u>related</u> 9	Total 10	4% 11	1% 12	This year 13	Previous year 14
Mathematical reserves before deduction for reinsurance: (Note 5)	Reserves before distribution of surplus	11													
	Reserves for bonus allocated to policyholders	12													
	Reserves after distribution of surplus	13													
Mathematical reserves after deduction for reinsurance: (Note 5)	Reserves before distribution of surplus	14													
	Reserves for bonus allocated to policyholders	15													
	Reserves after distribution of surplus	16													
Ratio of 16 to 13, or 0.85 if greater		17													
Required margin of solvency – first result – (Note 2)		19													
Required margin of solvency based on administrative expenses (note 7)		20													
Non negative capital at risk before reinsurance: (Note 3)	Temporary assurances with required margin of solvency of .001	21													
	Temporary assurances with required margin of solvency of .0015	22													
	All other contracts with required margin of solvency of .003	23													
Total for (21 to 23)		29													

**FSC 1 – FORM 60 (Sheet 2)**

**Returns under the Friendly Societies Prudential Rules**

Long term insurance business: Required minimum margin

Name of Society

Period ended 31 December

	Reg No	Units
	£/£000	
<input style="width: 40px; height: 20px;" type="text"/>	<input style="width: 40px; height: 20px;" type="text"/>	<input style="width: 40px; height: 20px;" type="text"/>

Class	Classes I & II	Class III business with relevant factor of				Class IV	Class VI	Class VII business with relevant factor of				Unallocated additional mathematical reserves with relevant factor of	Total for all classes		
Relevant factor (Note 1)	4% 1	4% 2	1% 3	NHL Expense related 4	Total 5	4% 6	4% 6A	4% 7	1% 8	NHL Expense related 9	Total 10	4% 11	1% 12	This year 13	Previous year 14
Non negative capital at risk after reinsurance (all contracts) (Note 3)	31														
Ratio of line 31 to line 29, or 0.50 if greater	32														
Required margin of solvency second result (Note 4)	39														
Sum of first and second results = (19 + 20 + 39)	49														
Required margin of solvency for subsidiary provisions and the additional margin for class IV business (Notes 6 and 8)	51														
Total required margin of solvency for long term business = 49 + 51	59														
Minimum guarantee fund	61														
Required minimum margin (greater of 59 and 61)	69														

**NOTES**

1. The appropriate factor specified in rule 1(2)(a) and 2(3) and (4) of Appendix 1.
2. Line 19 equals line 13 x Line 17 x relevant factor.
3. Capital at risk must be shown after distribution of surplus.
4. Line 39 equals line 32 x [line 21 x .001 + line 22 x .0015 + line 23 x .003] for Classes I and II or line 32 x line 29 x 0.003 for classes III and VII.
5. Any additional mathematical reserves shown at line 63 to Form 14 must be included in this Form (applied to all relevant classes)
6. For Class V business, the amount of the required margin of solvency must be stated in a note to the form and must be included in line 51
7. For class III and VII business, the entry at line 20 is 25% of the financial year's net administrative expenses pertaining to business for which the friendly society bears no investment risk and the allocation to cover management expenses is not fixed for a period exceeding five years. (Appendix 1 para 2(4)).
8. For class IV business and subsidiary provisions taken together, Forms 11 and 12 in Appendix 10 must be completed and appended to Form 60 (unless the Forms would be blank or paragraph 24(2) of Appendix 9 permits the friendly society not to complete the Forms). Lines 44 and 49 of Form 12 should be left blank. For the purposes of these Forms "health insurance" is health insurance based on actuarial principles that meets the conditions set out in paragraph 7 of Appendix 2. The entry at line 51 of Form 60 must equal the entry at 51.43 of Form 12 plus the amount to be included for class V business (see note 6).

**FSC 3 – FORM 11 (Sheet 1)**

**Returns under the Friendly Societies Prudential Rules**

General insurance business: Calculation of required margin of solvency – first method

Name of Society

Period ended 31 December

	Reg No	Units £/£000
<input style="width: 60px; height: 25px;" type="text"/>	<input style="width: 60px; height: 25px;" type="text"/>	<input style="width: 60px; height: 25px;" type="text"/>

Name of Fund/Summary

1 Last 12 months of this period

2 Last 12 months of previous period

Gross premiums receivable		11		
Premium taxes and levies (included in line 11)		12		
Sub-total A (11 – 12)		15		
Division of Sub-total A	Other than health insurance	Up to and including sterling equivalent of 50M Euro x 18/100	17	
		Excess (if any) over 50M Euro x 16/100	18	
	Health insurance	Up to and including sterling equivalent of 50M Euro x 6/100	19	
		Excess (if any) over 50M Euro x 16/300	20	
Sub-total B (17 + 18 + 19 + 20)		21		
Gross premiums earned		22		
Premium taxes and levies (included in line 22)		23		
Sub-total H (22 – 23)		26		
Division of Sub-total H	Other than health insurance	Up to and including sterling equivalent of 50M Euro x 18/100	28	
		Excess (if any) over 50M Euro x 16/100	29	
	Health insurance	Up to and including sterling equivalent of 50M Euro x 6/100	30	
		Excess (if any) over 50M Euro x 16/300	31	
Sub-total I (28 + 29 + 30 + 31)		32		

**FSC 3 – FORM 11 (Sheet 2)**

**Returns under the Friendly Societies Prudential Rules**

General insurance business: Calculation of required margin of solvency – first method

Name of Society

Period ended 31 December

	Reg No	Units £/£000
<input style="width: 60%; height: 25px;" type="text"/>	<input style="width: 60%; height: 25px;" type="text"/>	<input style="width: 60%; height: 25px;" type="text"/>

Name of Fund/Summary

1 Last 12 months of this period

2 Last 12 months of previous period

Sub-total J (greater of sub-total B and sub-total I)	40		
Claims paid in 3 year period	41		
Claims outstanding carried forward at the end of the period	43		
Claims outstanding brought forward at the beginning of the period	45		
Sub-total C (41 + 43 – 45)	46		
Amounts recoverable from reinsurers in respect of claims included in Sub-total C	47		
Sub-total D (46 – 47)	48		
First result Sub-total J x $\frac{\text{Sub-total D}}{\text{Sub-total C}}$ (or, if 0.5 is greater, x 0.5)	49		
Provisions for claims outstanding (before discounting and net of reinsurance)	50		
Brought forward amount (12.43.2 x 50.1 / 50.2 or, if less, 12.43.2)	51		
Greater of lines 49 and 51	52		

**NOTES**

1. Entries in column 2, lines 17-20 and 28-31 must be the corresponding entries in column 1 of the Form for the previous year, even if the amount of Euro in the description of the line has changed.
2. 51.2 must be 11.51.2 from the previous year's return.

## FSC 3 – FORM 12

### Returns under the Friendly Societies Prudential Rules

General insurance business: Calculation of required margin of solvency – second method, and statement of required minimum margin

Name of Society

Period ended 31 December

	Reg No	Units £/£000
<input style="width: 60%; height: 30px;" type="text"/>	<input style="width: 60%; height: 30px;" type="text"/>	<input style="width: 60%; height: 30px;" type="text"/>

Name of Fund/Summary

1 Last 12 months of this period

2 Last 12 months of the previous period

Reference period (means the three last preceding financial years) (Note 1)	11				
Claims paid in reference period	21				
Claims outstanding carried forward at the end of the period	23				
Claims outstanding brought forward at the beginning of the period	25				
Sub-total E (21 + 23 – 25)	29				
Division of Sub-total A	Other than health insurance	Up to and including sterling equivalent of 7M 35M Euro x 26/100 (note 3)	32		
		Excess (if any) over 7M 35M Euro x 23/100 (note 3)	33		
	Health insurance	Up to and including sterling equivalent of 7M 35M Euro x 26/300 (note 3)	34		
		Excess (if any) over 7M 35M Euro x 23/300 (note 3)	35		
Sub-total F (32 to 35)	39				
Second result Sub-total F x Sub-total D / Sub-total C (or, if 0.5 is greater, x 0.5)	41				
Higher of First result and brought forward amount (Note 2)	42				
Required margin of solvency (the higher of lines 41 and 42)	43				
Minimum guarantee fund	44				
Required minimum margin (the higher of lines 43 and 44)	49				

#### NOTES

1. If the society has not been in existence long enough to acquire a reference period, this must be stated and lines 11 to 41 ignored.
2. The entry at line 42 must be equal to the entry at line 5244 on Form 11
3. Entries in column 2, lines 32-35 must be the corresponding entries in column 1 of the Form for the previous year, even if the amount of Euro in the description of the line has changed.



Form 13 in FSC3 is amended by adding the following note:

4. If the amount shown at line 12 of Form 15 has had to be increased because of restrictions on discounting (see note 2 to Form 15), the reinsurers' share shown at line 61 must be adjusted to be consistent with the amount shown in Form 15.

Form 15 is amended by adding the following note:

2. The amount shown in line 12 may only be discounted or reduced to take account of investment income for class 1 or 2 business:

(a) for class 1 or 2 business; or

(b) in respect of annuities.

So, if the technical provisions for claims outstanding for other business are discounted or reduced to take account of investment income, then they must be increased by the difference between the undiscounted and discounted provisions. In this case, the amount of the increase must be shown in a supplementary note to this form, together with the corresponding increase in the reinsurers' share shown in line 9-61 of Form 13.

#### Annex 4

#### Guidance on margins of solvency and the guarantee fund

...

- 4B. Guidance Note 2.1 in *IPRU(INS)* (Hybrid capital: Admissibility for solvency) applies to *friendly societies* applying for a waiver of rules 4.7(2) or (4) of *IPRU(FSOC)* under section 148 of the *Act* (Modification or waiver of rules).

...

9. In addition to these modifications, the *FSA* has power under section 148 of the *Act* to direct that certain requirements do not apply to any particular *friendly society*, and there may be circumstances where the *minimum guarantee fund* may be varied in the case of certain *non-directive incorporated friendly societies*. In addition, the increases to the *minimum guarantee fund* required by virtue of the Solvency I Directives (2002/12/EC and 2002/13/EC of 5 March 2002) from 1 January 2004 have not been applied to *non-directive incorporated friendly societies*.

...

#### **Life Directive Friendly Societies**

- 11.2 (1) These would include any *friendly society* which carries on *long-term insurance business* where:
- (a) its rules do not contain provision for calling up additional contributions, for reducing benefits or for claiming assistance from other persons who have undertaken to provide it; or
  - (b) its *annual contribution income* from *long-term insurance business* exceeded ~~500,000~~ 5 million Euro for 3 consecutive years.
- (2) Valuation is made annually and the rules in chapter 4 and rule 5.1 apply.

### **Non-life Directive Friendly Societies**

- 11.3 (1) Similarly, these would include any *friendly society* which carries on *general insurance business* where:
- (a) its rules do not contain provision for calling up additional contributions or for reducing benefits; or
  - (b) its *annual contribution income* from *general insurance business* in any previous year exceeded ~~1,000,000~~ 5 million Euro.
- (2) Valuation is made triennially and rules in chapter 4 (other than rules 4.5 – *minimum guarantee fund* and rule 4.12 – adequacy of *premiums*) and rule 5.2 apply.

### **Non-Directive Incorporated Friendly Societies ~~other than those included above~~**

#### 11.4 Long-term ~~B~~business

- (1) These may fall outside the EC requirements but fall within the scope of rule 5.1 and are required to be valued annually. The *required margin of solvency* is set out in rules 4.1 to ~~4.10~~ 4.7. New *friendly societies* should have ~~margins of solvency~~ margins of solvency at least equal to the appropriate *minimum guarantee fund*. Rule 4.5 specifies a *minimum guarantee fund* with a threshold of 100,000 Euro increasing in steps. This may be varied by the exercise of the *FSA*'s power under section 148 of the *Act*.
- (2) Accordingly, a *non-directive incorporated friendly society* carrying on *long-term insurance business* will be expected to meet the solvency margin requirement immediately following incorporation. However, a valuation at that date is not necessarily required unless that date would otherwise be a normal *valuation date*.

### ~~Non-directive incorporated Friendly Societies carrying on~~ General insurance business

- 11.5 Similar considerations will apply in the case of *non-directive incorporated friendly societies* carrying on *general insurance business*. The *minimum guarantee fund* is 225,000 Euro. These societies are required to be valued triennially.

**INTERIM PRUDENTIAL SOURCEBOOK FOR INSURERS  
(SOLVENCY I DIRECTIVE) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 138 (General rule-making power);
  - (2) section 150(2) (Actions for damages);
  - (3) section 156 (General supplementary powers); and
  - (4) section 157 (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 January 2004 and:
- (1) except as provided in (2), applies to insurers, in each case for and from the first day of their respective financial years beginning on 1 January 2004 and during that calendar year;
  - (2) IPRU(INS) rule 9.6(1B) applies to insurers for their respective financial years ending on dates between 31 December 2003 and 30 December 2004, inclusive.

**Amendments to the Interim Prudential sourcebook for insurers**

- D. IPRU(INS) is amended in accordance with Annex A to this instrument.

**Amendments to the Supervision manual**

- E. SUP is amended in accordance with Annex B to this instrument.

**Amendment to the Glossary**

- F. The Glossary is amended in accordance with Annex C to this instrument.

**Citation**

- G. This instrument may be cited as the Interim Prudential Sourcebook for Insurers (Solvency I Directive) Instrument 2003.

By order of the Board  
18 September 2003

## Annex A

### Amendments to the Interim Prudential sourcebook for insurers

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### VOLUME 1

- 2.4 (1) Subject to (2) to ~~(5)~~ (8), the *margin of solvency* to be maintained by an *insurer* must be determined –
- (a) as regards *long-term insurance business*, in accordance with rules 2.5 to 2.8; and
  - (b) as regards *general insurance business*, by taking the greater of:
    - (i) the higher of the two sums resulting from the application of the method of calculation set out in **Appendix 2.1**, and
    - (ii) the two sums sum resulting from the application of the ~~two methods~~ method of calculation set out in ~~**Appendices 2.1**~~ and **Appendix 2.2**.
- ...
- (3) For a *contract of insurance* (to which rule 11.8(a) applies), the ~~*required margin of solvency*~~ must be determined by taking the aggregate of the results arrived at by applying –
- (a) in the case of so much of the contract as is within any ~~class~~ *class* of *long-term insurance business*, the appropriate method determined by the *Margins of Solvency Rules* for that ~~class-class~~; and
  - (b) in the case of so much of the contract as is within *general insurance business class 1* or *2*, the method of calculation set out in ~~**Appendix 2.1**~~ (excluding paragraphs 6, 7 and 8) (1)(b).
- ...
- (6) Subject to (7), in each case in which (1)(b) applies - including under (3) and rule 2.7(1) - if the *margin of solvency* under (1)(b) is lower than the *required margin of solvency* of the *prior financial year*, then the *margin of solvency* must be adjusted so that it is at least equal to the *required margin of solvency* of the *prior financial year* multiplied by the ratio of the amount of the *technical provisions for claims outstanding* at the end of the *prior financial year* and the amount of the *technical provisions for claims outstanding* at the beginning of the *prior financial year*.
- (7) For the purpose of (6) -
- (a) *technical provisions* must not be discounted, or reduced, to take account of investment income, unless -

- (i) they relate to risks in *classes 1 or 2*;
  - (ii) they are reduced to reflect the discounting of annuities; or
  - (iii) they are established by a *pure reinsurer* that does not have *permission* under the *Act* to effect *contracts of insurance*; and
- (b) *technical provisions* must be calculated net of reinsurance; but
- (c) the ratio must not be higher than 1.
- (8) Where the nature or quality of *reinsurance* relied on to reduce the *required margin of solvency* changes significantly during the *financial year*, an *insurer* must notify the *FSA* forthwith of the change.

2.5 ...

- (2) For the *first calculation* –
- (a) a sum equal to 4% of the *mathematical reserves* for *direct insurance business* and *reinsurance* acceptances without any deduction for *reinsurance cessions* must be taken;
  - (b) the amount of the *mathematical reserves* at the end of the *preceding prior financial year* after the deduction of *reinsurance cessions* must be expressed as a percentage of the amount of those *mathematical reserves* before any such deduction; and
  - (c) the sum mentioned in (a) must be multiplied –
    - (i) where the percentage arrived at under (b) is greater than 85% (or, in the case of a *pure reinsurer*, 50%), by that greater percentage, and
    - (ii) in any other case, by 85% (or, in the case of a *pure reinsurer*, 50%).
- (3) For the *second calculation* –
- (a) subject to (4), (5) and (6), a sum equal to 0.3% of the ‘capital at risk’ for contracts on which the ‘capital at risk’ is not a negative figure must be taken;
  - (b) the amount of the ‘capital at risk’ at the end of the *preceding prior financial year* for contracts on which the ‘capital at risk’ is not a negative figure, after the deduction of *reinsurance cessions*, must be expressed as a percentage of the amount of that ‘capital at risk’ before any such deduction; and
  - (c) the sum arrived at under (a) must be multiplied –
    - (i) where the percentage arrived at under (b) is greater than 50%, by that greater percentage, and

(ii) in any other case, by 50%.

- (8) When the amount of the *mathematical reserves* referred to in (2)(a), or the amount of the ‘capital at risk’ referred to in (3)(a), is calculated for the purposes of determining the *margin of solvency*, the day as on which that amount is calculated must be the same as that as on which the *margin of solvency* is determined; and the *mathematical reserves* referred to in (7) must also be calculated as on that day when the ‘capital at risk’ in question is that referred to in (3)(a), but must be calculated as at the end of the ~~preceding~~ prior financial year when the ‘capital at risk’ in question is that referred to in (3)(b).

2.6 ...

(3) In so far as -

(a) an *insurer* bears no investment risk; and

~~(b) the total expired and unexpired term of the relevant contract exceeds five years; and~~

~~(b)~~ (b) the allocation to cover *management expenses* in the relevant contract has a fixed upper limit which is effective as a limit for a period exceeding five years,

the *first calculation* must be applied, but as if rule 2.5(2)(a) contained a reference to 1% instead of 4%.

~~(4) If neither (2) nor (3) applies (2), (3) or (3A) does not apply, then, subject to (5), the required margin of solvency is zero.~~

~~(4) In so far as -~~

~~(a) an *insurer* bears no investment risk; and~~

~~(b) the allocation to cover *management expenses* in the relevant contract does not have a fixed upper limit which is effective as a limit for a period exceeding five years,~~

~~the *margin of solvency* is an amount equivalent to 25% of the prior *financial year's* net administrative expenses pertaining to such business.~~

- (5) Where an *insurer* covers a death risk, a sum arrived at by applying the *second calculation* (disregarding rules 2.5(4) and 2.5(5)) must be added to any *margin of solvency*, including a ~~required~~ *margin of solvency* of zero, arrived at under (2), (3) or (4).

2.7 (1) For *long-term insurance business* of class IV ~~or VI~~, the *margin of solvency* must be determined by applying the *first calculation* plus the sum arrived at by treating the business as *general insurance business* of class 2 and applying rule 2.4(1)(b) to it.

(2) For long-term insurance business of class VI, the margin of solvency must be determined by applying the first calculation.

(3) If both (1) and rule 2.4(3)(b) apply, a single combined margin of solvency must be calculated under rule 2.4(1)(b) in respect of the class IV and supplementary class 1 and 2 insurance business.

...

2.9 (1) An insurer must ensure that its margin of solvency does not fall below the 'guarantee fund'.

(2) Subject to (3), ~~and to (6)~~, one-third of the required margin of solvency constitutes the **guarantee fund**.

(3) The 'guarantee fund' must not be less than an amount (the **minimum guarantee fund**) arrived at in accordance with **Appendix 2.3**, whether the required margin of solvency is greater or less than that amount.

(4) In the case of long-term insurance business, items that are not implicit items must be at least large enough to cover either the 'minimum guarantee fund' or 50% of the 'guarantee fund', whichever is the greater.

(5) In the case of general insurance business, unpaid share capital (or initial fund of a mutual) and any claim which a mutual with variable contributions has against its members by way of a call for supplementary contributions for a financial year may not be taken into account in complying with (1).

(6) In the case of long-term insurance business, unpaid share capital (or initial fund of a mutual) and implicit items which relate to future profits and zillmerising may not be taken into account in complying with (1).

2.10 (1) Where an insurer has assets equal to or in excess of its liabilities, then, in addition to any other applicable rules, (2) to (5) have effect for determining the extent to which the value of the assets exceeds the amount of liabilities in connection with the margin of solvency, the required margin of solvency, the guarantee fund and the minimum guarantee fund.

(2) ~~Where—~~

~~(a) an insurer has issued shares some or all of which are not 'fully paid' and the total paid-up value of all the shares is equal to or greater than one quarter of their nominal value or, in the case of shares issued at a premium, of the aggregate of their nominal value and the premium; or~~

~~(b) at least one quarter of the fund of a mutual is paid up;~~

~~an amount not greater than half the total value of the amounts unpaid may be taken into account as an asset. Unpaid or share capital or an unpaid amount on partly paid share capital (or initial fund of a mutual) has no value, and for the purposes of this paragraph a share must not be regarded as fully partly paid if there are any amounts due but unpaid on it.~~

- (3) Notwithstanding rule 5.2(2), where an *insurer* has issued cumulative preference *shares*, liabilities in respect of such *shares* may be left out of account, in aggregate up to 50% of the lesser of the *margin of solvency* and the *required margin of solvency*, save that liabilities in respect of *shares* which are redeemable for the purposes of section 159 of the *Companies Act* may be left out of account, in aggregate only up to 25% of the lesser of the *margin of solvency* and the *required margin of solvency*.
- (4) In the case of a *mutual with variable contributions* carrying on *general insurance business*, any claim which the *mutual* has against its members by way of a call for supplementary contributions for a *financial year* has no value ~~must have its full value for that *financial year*, but the value must not exceed the lesser of—~~
- (a) ~~50% of the difference between the maximum contributions and the contributions called in; or~~
- (b) ~~50% of the required margin of solvency.~~
- (5) The *implicit items* (which relate to future profits, *zillmerising* and hidden reserves) have no value. An *insurer* which applies for a waiver of this rule under section 148 of the *Act* with respect to future profits must submit with the application for waiver:
- (a) an actuarial report substantiating the likelihood of the emergence of the future profits in the future; and
- (b) a plan as to how it intends to comply with the future limits on, and termination of use of, implicit items for future profits required by the Life Directive (2002/83/EC).
- (6) The *margin of solvency* must be reduced by the amount of own *shares* directly held by an *insurer*.
- (7) Subject to (8), in the case of an *insurer* which discounts or reduces its *technical provisions* for *claims* outstanding to take account of investment income as permitted by article 60(1)(g) of the *Insurance Accounts Directive*, the *margin of solvency* must be reduced by the difference between: -
- (a) the undiscounted *technical provisions* for *claims* outstanding or the *technical provisions* for *claims* outstanding before deductions as disclosed in the notes to the accounts; and
- (b) the discounted *technical provisions* for *claims* outstanding or the *technical provisions* for *claims* outstanding after deductions.
- For these purposes, *technical provisions* must be calculated net of *reinsurance*.
- (8) (7) does not apply to a *pure reinsurer* which does not have permission under the *Act* to effect *contracts of insurance*, risks of *classes 1 or 2*, or in respect of the discounting of annuities.
- ~~(6)-(9)~~ For the purposes of the *Margins of Solvency Rules* and the definition of *non-directive insurer*, the exchange rate from the Euro to the pound sterling for each year beginning on 31 December is the rate applicable on the last day of



the preceding October for which the exchange rates for the currencies of all the European Union member states were published in the Official Journal of the European Communities.

...

9.6 ...

(1B) (a) An insurer must, in respect of any financial year ending from 31 December 2003 to 30 December 2004 (inclusive) send to the FSA, in addition to the documents in (1), the documents and information in (b).

(b) The documents and information are: -

(i) Forms 11, 12 and 60 as amended by the Interim Prudential Sourcebook for Insurers (Solvency I Directive) Instrument 2003, provided that the amended Form 60 need not be submitted if it contains no information different to the information in the un-amended Form 60; and

(ii) the amounts at line 12 of amended Form 15 and line 61 of amended Form 13, if these lines contain amounts different from the amounts at the same lines of the un-amended forms.

(c) The documents and information in (b) must be submitted to the insurer's normal supervisory contact at the FSA within four months of the end of the financial year

## 11.1 Definitions

<i>gross premiums earned</i>	in respect of a <i>financial year</i> , <del>means</del> such proportion of <i>gross premiums written</i> or <i>gross premiums receivable</i> , as <u>the case may be</u> , as is attributable to risk borne by the <i>insurer</i> during that <i>financial year</i> .
<i>gross premiums written</i>	the amounts required by the insurance accounts rules to be shown in the profit and loss account of a company at general business technical account item I.1.(a), or for <u><i>class IV insurance business</i>, at <i>long-term business technical account item II.1(a)</i></u> .
<i>margin of solvency</i>	the excess of the value of assets over the amount of liabilities, that value and amount being determined in accordance with the <i>Valuation of Assets Rules</i> , <del>and</del> the <i>Determination of Liabilities Rules</i> <u>and rule 2.10</u>
<i>non-directive insurer</i>	<ol style="list-style-type: none"> <li>(1) an <i>insurer</i> whose <i>insurance business</i> is restricted to the provision of benefits which vary according to the resources available and in which the contributions of the members are determined on a flat-rate basis;</li> <li>(2) an <i>insurer</i> whose <i>long-term insurance business</i> is restricted to the provision of benefits for employed and self-employed persons belonging to an undertaking or group of undertakings, or a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity (whether or not the <i>commitments</i> arising from such operations are fully covered at all times by <i>mathematical reserves</i>);</li> <li>(3) an <i>insurer</i> which undertakes to provide benefits solely in the event of death where the amount of such benefits does not exceed the average funeral costs for a single death or where the benefits are provided in kind;</li> <li>(4) a <i>mutual</i> (carrying on <i>long-term insurance business</i>) – <ol style="list-style-type: none"> <li>(a) whose articles of association contain provisions for calling up additional contributions from members or reducing their benefits or claiming assistance from other persons who have undertaken to provide it; and</li> </ol> </li> </ol>

	<p>(b) whose annual <i>gross premium</i> income (other than from contracts of <i>reinsurance</i>) has not exceeded <del>500,000</del> <u>5 million</u> Euro for each of the <i>financial year in question</i> and the two <i>previous financial years</i>;</p> <p>(5) a <i>mutual</i> (carrying on <i>general insurance business</i>) whose –</p> <p>(a) articles of association contain provisions for calling up additional contributions from members or reducing their benefits;</p> <p>(b) business does not cover liability risks, other than <i>ancillary risks</i>, or credit or suretyship risks;</p> <p>(c) <i>gross premium</i> income (other than from contracts of <i>reinsurance</i>) for the <del>preceding</del> <i>financial year in question</i> did not exceed <del>1,000,000</del> <u>5 million</u> Euro; and</p> <p>(d) members provided at least half of that <i>gross premium</i> income;</p> <p>(6) an <i>insurer</i> whose <i>insurance business</i> (other than <i>reinsurance</i>) is -</p> <p>(a) restricted to the provision of assistance for persons who get into difficulties while travelling, while away from home or while away from their permanent residence;</p> <p>(b) carried out exclusively on a local basis and consists only of benefits in kind; and</p> <p>(c) such that the <i>gross premium</i> income from the provision of assistance in the <i>financial year in question</i> did not exceed 200,000 Euro; or</p> <p>(7) a <i>mutual</i> whose liabilities in respect of <i>general insurance contracts</i> are fully reinsured with or guaranteed by other <i>mutuals</i> (including <i>friendly societies</i>), and</p> <p>whose <i>insurance business</i> is limited to that described in paragraphs (1) to (7)</p>
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**GENERAL INSURANCE BUSINESS SOLVENCY MARGIN**

**FIRST METHOD OF CALCULATION (PREMIUM BASIS)**

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1. The *gross premiums receivable* (or contributions, as the case may be) in respect of the *insurer's entire general insurance business* for the *financial year in question* must be aggregated and the method of calculation in (1B) to 14 applied.
  
- 1A. The *gross premiums earned* (or contributions, as the case may be) in respect of the *insurer's entire general insurance business* for the *financial year in question* must be aggregated and the method of calculation in (1B) to 14 applied.
  
- 1B. Except in the case of a *pure reinsurer* which does not have permission under the *Act* to effect *contracts of insurance*, premiums in respect of *classes 11, 12 and 13* must be increased by 50%. Statistical methods may be used to allocate the premiums in respect of these *classes*.
  
2. From each of the aggregates arrived at under 1 and 1A there must be deducted-
  - (a) any taxes included in the *gross premiums receivable*; and
  - (b) any levies that are related to premiums and are recorded in the *insurer's books* as payable in the *financial year in question* in respect of *general insurance business*.
  
3. The amount arrived at under 2 must be multiplied by 12 and divided by the number of months in the *financial year*.
  
4. Subject to paragraph 12 of **Appendix 2.3**, if ~~If~~ the amount arrived at under 3 is more than ~~40~~ 50 million Euro, it must be divided into two portions, the former consisting of ~~40~~ 50 million Euro and the latter comprising the excess.
  
5. Where there has been a division into two portions pursuant to 4, there must be calculated and added together 18% and 16% of the two portions respectively; and where there has been no such division, there must be calculated 18% of the amount arrived at under 3.
  
6. In the case of *general insurance business* consisting of health insurance based on actuarial principles, 5 applies with the substitution of 6% for 18% and 5

and one-third % for 16%, but only if all the 'necessary conditions' are satisfied.

7. For the purposes of 6, the **necessary conditions** are -
- (a) the *gross premiums receivable* are calculated on the basis of sickness tables appropriate to the *insurance business*;
  - (b) the reserves include provision for increasing age, or in the case of class IV, either the reserves include provision for increasing age, or the business is conducted on a group basis;
  - (c) an additional premium is collected in order to set up a safety margin of an appropriate amount;
  - (d) the contract does not allow it is not possible for the insurer to cancel the contract after the end of the third year of the contract; and
  - (e) the contract provides for the possibility of increasing premiums or reducing payments during its currency.
8. Where 6 applies to an *insurer* whose *general insurance business* consists partly of health insurance based on actuarial principles and partly of other business, the procedure provided in 1 to 6 must operate separately for each part of the *general insurance business*, so as to produce a sum under 6 for the health insurance and a sum under 5 for the other business.
9. (1) If the 'provision for *claims* outstanding' at the end of the *preceding financial year in question* exceeds the provision for *claims* outstanding at the beginning of ~~that year~~ the financial year two years prior to the financial year in question, then the amount of the excess must be added to the 'amount of ~~claims~~ claims paid' in the *preceding financial year 3 year period*.
- (2) If the 'provision for *claims* outstanding' at the beginning of the *preceding financial year two years prior to the financial year in question* exceeds the provision for *claims* outstanding at the end of ~~that year~~ the financial year in question, then the amount of the excess must be deducted from the 'amount of *claims* paid' in the *preceding financial year 3 year period*.
10. (1) For the purposes of 9, the **amount of claims paid in each financial year**, is the amount that is recorded in the *insurer's* books as at the end of the *financial year* -
- (a) in relation to *general insurance business classes* 1 to 17, as paid by the *insurer* (whether or not payment has been effected in that year) in full or partial settlement of the '*claims*' described in (2) and the '*expenses*' described in (3); or
  - (b) in relation to *general insurance business class* 18, as being the costs borne by the *insurer* (whether or not borne in that year) in respect of the assistance given,
- less (in either case) any 'recoverable' amounts within the meaning of (4).

- (2) The **claims** mentioned in (1) are *claims* under *contracts of insurance* including *claims* relating to business accounted for over a longer period than a *financial year*.
  - (3) The **expenses** mentioned in (1) are expenses (such as legal, medical, surveying or engineering costs) which are incurred by the *insurer*, whether through the employment of its own staff or otherwise, and are directly attributable to the settlement of individual *claims*, whether or not the individual *claims* in question are those mentioned in (1).
  - (4) **Recoverable** amounts for the purposes of (1) are amounts recoverable by the *insurer*, in respect of the '*claims*' mentioned in (1) or other *claims*, including amounts recoverable by way of salvage, amounts recoverable from third parties and amounts recoverable from other *insurers* but excluding amounts recoverable in respect of *reinsurance ceded* by the *insurer*.
11. (1) For the purposes of 9, the **provision for claims outstanding**, is (subject to the *Valuation of Asset Rules* and *Determination of Liabilities Rules*) the amount set aside by the *insurer* as at the beginning or end of the period of 3 financial year years as being an amount likely to be sufficient to meet -
- (a) the '*claims*' described in (2); and
  - (b) the '*expenses*' described in (3),
- less any 'recoverable' amounts within the meaning of (4).
- (2) The **claims** mentioned in (1) are *claims* under *contracts of insurance* in respect of incidents occurring -
- (a) in the case of an amount set aside as at the beginning of the ~~financial year~~ *financial year*, before the beginning of that year; and
  - (b) in the case of an amount set aside as at the end of the *financial year*, before the end of that year,
- being *claims* which have not been treated as *claims* paid including *claims* relating to business accounted for over a longer period than a *financial year*, *claims* the amounts of which have not been determined and *claims* arising out of incidents that have not been notified to the *insurer*.
- (3) The **expenses** mentioned in (1) are expenses (such as legal, medical, surveying or engineering costs) which are likely to be incurred by the *insurer*, whether through the employment of its own staff or otherwise, and are directly attributable to the settlement of individual *claims*, whether or not the individual *claims* in question are those mentioned in (1).
  - (4) **Recoverable** amounts for the purposes of (1) are amounts estimated by the *insurer* to be recoverable by it in respect of the '*claims*' mentioned in (1), including amounts recoverable by way of salvage, amounts recoverable from third parties and amounts recoverable from other *insurers* but excluding amounts recoverable in respect of *reinsurance ceded* by the *insurer*.

12. From the amount determined under 9(1) or (2) there must be deducted the total sum recoverable in respect of that amount under *reinsurance contracts ceded during the relevant period*.
13. The amount determined under 12 must be expressed as a percentage of the amount determined under 9(1) or (2).
14. The sum arrived at under 5 or 6 or the aggregate of the sums arrived at under those paragraphs, as the case may be, must be multiplied -
  - (a) where the percentage arrived at under 13 is greater than 50% but not greater than 100%, by the percentage so arrived at;
  - (b) where the percentage so arrived at is greater than 100%, by 100%; and
  - (c) in any other case, by 50%.

## Appendix 2.2

### GENERAL INSURANCE BUSINESS SOLVENCY MARGIN

#### SECOND METHOD OF CALCULATION (CLAIMS BASIS)

---

1. In this Appendix **reference period**, in relation to an *insurer*, means either -
  - (a) the *financial year* ~~which last ended~~ in question and the two *previous financial years*; or
  - (b) the *financial year in question* and the six ~~previous~~ previous financial years if more than one-half of the *gross premiums receivable* in that period were in respect of all or any of the following, namely, storm (as included in *general insurance business class 8*), hail (as included in *general insurance business class 9*), frost (as included in *general insurance business class 9*) and credit (as included in *general insurance business class 14*).
2. If an *insurer* has not been in existence long enough to acquire a 'reference period', this Appendix must be treated as giving a lower result than that given by **Appendix 2.1** and does not otherwise apply to the *insurer*.
- 2A. Except in the case of a *pure reinsurer* which does not have permission under the *Act* to effect *contracts of insurance, claims, provisions and recoveries* in respect of *classes 11, 12 and 13* must be increased by 50%. Statistical methods may be used to allocate the *claims, provisions and recoveries* in respect of these *classes*.
3.
  - (1) If the 'provision for *claims* outstanding' at the end of the 'reference period' exceeds the 'provision for *claims* outstanding' at the beginning of the 'reference period', the amount of the excess must be added to the 'amount of *claims* paid' in the 'reference period'.
  - (2) If the 'provision for ~~claims~~ *claims* outstanding' at the beginning of the 'reference period' exceeds the 'provision for ~~claims~~ *claims* outstanding' at the

end of the 'reference period', the amount of the excess must be deducted from the 'amount of ~~claims~~ claims paid' in the 'reference period'.

- (3) For the purposes of this paragraph, the expressions **amount of claims paid** and **provision for claims outstanding** have, in relation to a 'reference period', the same meaning as they have in paragraph 9 of **Appendix 2.1**.
4. The aggregate obtained under 3(1) or (2) must be divided by the number of months in the 'reference period' and multiplied by 12.
5. Subject to paragraph 12 of Appendix 2.3, if ~~If~~ the amount arrived at under 4 is more than ~~7~~ 35 million Euro, it must be divided into two portions, the former consisting of ~~7~~ 35 million Euro and the latter comprising the excess.
6. Where there has been a division into two portions pursuant to 5, there must be calculated and added together 26% and 23% of the two portions respectively; and where there has been no such division, there must be calculated 26% of the amount arrived at under 4.
7. In the case of *general insurance business* consisting of health insurance based on actuarial principles, 6 applies with the substitution of 8 and two-thirds % for 26% and 7 and two-thirds % for 23%, but only if all the 'necessary conditions' are satisfied.
8. The **necessary conditions** for the purposes of 7 are the same as those set out in paragraph 7 of **Appendix 2.1**.
9. In a case of the kind mentioned in 8 of **Appendix 2.1**, that paragraph applies (with the necessary modifications) so as to produce separate sums under 6 and 7.
10. The sum arrived at under 6 or 7 or the aggregate of the sums arrived at under those paragraphs, as the case may be, must be multiplied by the same percentage as is applicable for the purposes of paragraph 14 of **Appendix 2.1**.

## Appendix 2.3

### MINIMUM GUARANTEE FUND

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#### Long-term business

1. Subject to ~~7-6, 11 and 12~~, the *minimum guarantee fund* for *long-term insurance business* is -
  - (a) in the case of a *pure reinsurer* which -
    - (i) is the wholly-owned *subsidiary* of an *insurer* carrying on *long-term insurance business*, and
    - (ii) carries on only such *reinsurance* business as is *ceded* to it by that *insurer*,200,000 Euro;
  - (b) in the case of a *mutual*, ~~600,000~~ 2,250,000 Euro; and



(c) in any other case, ~~800,000~~ 3 million Euro.

### General business

2. Subject to 3 to 7 and 12, the *minimum guarantee fund* for *general insurance business* is 2 million Euro, the amount shown in the table below as applicable to the *general insurance business class* for which the *insurer* has permission under the *Act* (or the highest such amount if the *insurer* has permission for more than one *class*).

General Business	Amount
<i>Class 10, 11, 12, 13, 14, or 15</i>	400,000 Euro
<i>Class 1, 2, 3, 4, 5, 6, 7, 8, 16, or 18</i>	300,000 Euro
<i>Class 9 or 17</i>	200,000 Euro

3. ~~In the case where the risks covered fall within class 14 and where the annual amount of premiums or contributions of the insurer due in respect of that class for each of the financial year in question and two previous financial years exceeded 2,500,000 Euro or 4% of the total amount of premiums or contributions receivable by the insurer, for the amount of Euro given in the table in 2 there must be substituted the amount of 1,400,000 Euro. Where insurance business is carried on in respect of some or all of the risks included in classes 10 to 15, the minimum guarantee fund is 3 million Euro.~~
4. ~~Where an insurer carrying on credit insurance business is required to increase the amount of Euro pursuant to 3, the insurer has—~~
- (a) ~~— a period of three years in which to bring the fund up to 1,000,000 Euro;~~
- (b) ~~— a period of five years to bring the fund up to 1,200,000 Euro; and~~
- (c) ~~— a period of seven years to bring the fund up to 1,400,000 Euro,~~
- ~~such periods to run from the date on which the criteria set out in 3 are fulfilled.~~
5. ~~An insurer which has permission limited to part of a class is, for the purposes of 2, treated as having permission for the whole of the class.~~
6. 5. In the case of a *mutual*, the *minimum guarantee fund* for *general insurance business* required by 2 to 5 is reduced by 25%.

### Long-term and general insurance business

7. 6. In relation to a *UK margin of solvency* or *EEA margin of solvency* maintained under rule 2.1(2)(b) or (3)(e), the *minimum guarantee fund* for *long-term* or *general insurance business* is one-half of the amount arrived at by applying (1) to (5) the provisions of this Appendix.

### Non-directive insurers

7. For non-directive insurers, subject to 8 to 10, the minimum guarantee fund for general insurance business is the amount shown in the table below as applicable to the general insurance business class for which the insurer has permission under the Act (or the highest such amount if the insurer has permission for more than one class).

<u>General Business</u>	<u>Amount</u>
<u>Class 10, 11, 12, 13, 14, or 15</u>	<u>400,000 Euro</u>
<u>Class 1, 2, 3, 4, 5, 6, 7, 8, 16, or 18</u>	<u>300,000 Euro</u>
<u>Class 9 or 17</u>	<u>200,000 Euro</u>

8. In the case where the risks covered fall within class 14 and where the annual amount of premiums or contributions of the insurer due in respect of that class for each of the financial year in question and the two previous financial years exceeded 2,500,000 Euro or 4% of the total amount of premiums or contributions receivable or earned by the insurer, for the amount of Euro given in the table in 8 there must be substituted the amount of 1,400,000 Euro.
9. An insurer which has permission limited to part of a class is, for the purposes of 7, treated as having permission for the whole of the class.
10. In the case of a mutual, the minimum guarantee fund required by 7 to 9 is reduced by 25%.
11. For non-directive insurers, the minimum guarantee fund for long-term insurance business is-
- (a) in the case of a pure reinsurer which -
- (i) is the wholly-owned subsidiary of an insurer carrying on long-term insurance business, and
- (ii) carries on only such reinsurance business as is ceded to it by that insurer, 200,000 Euro;
- (b) in the case of a mutual, 600,000 Euro; and
- (c) in any other case, 800,000 Euro.

#### **Increases to reflect consumer price index**

12. Subject to 13 and 14, the base amounts in Euro specified in 1 and 2 and **Appendices 2.1 and 2.2** will increase each year, starting on the first review date of 20 September 2003 (and annually after that), by the percentage change in the European index of consumer prices (comprising all EU member states as published by Eurostat) from 20 March 2002 to the relevant review date, rounded up to a multiple of 100,000 Euro.
13. In any year, if the percentage change since the last increase is less than 5%, then there will be no increase.
14. The increase will take effect 30 days after the EU Commission has informed the European Parliament and Council of its review and the relevant percentage change.

Form 11 of Appendix 9.1 (Balance sheet and profit and loss account) is replaced and Form 12 is amended as follows:

**General insurance business : Calculation of required margin of solvency - first method and brought forward**

Name of insurer

Global business/UK branch business/EEA branch business

Financial year ended

		Company registration number	GL/UK/CM	Period ended		Units
				day	month	
		R11				£000
				This financial year		Previous year
				1		2
Gross premiums receivable		11				
Premium taxes and levies (included in line 11)		12				
Premiums receivable net of taxes and levies (11-12)		13				
Premiums for classes 11, 12 or 13 (included in line 13)		14				
<b>Sub-total A</b> (13 + ½ 14)		15				
<b>Adjusted Sub-total A</b> if financial year is not a 12 month period to produce an annual figure		16				
Division of Sub-total A (or adjusted Sub-total A if appropriate)	Other than health insurance	Up to and including sterling equivalent of 50M EURO x 0.18	17			
		Excess (if any) over 50M EURO x 0.16	18			
	Health insurance	Up to and including sterling equivalent of 50M EURO x 0.06	19			
		Excess (if any) over 50M EURO x 0.16 / 3	20			
<b>Sub-total B</b> (17+18+19+20)		21				
Gross premiums earned		22				
Premium taxes and levies (included in line 22)		23				
Premiums receivable net of taxes and levies (22-23)		24				
Premiums for classes 11, 12 or 13 (included in line 25)		25				
<b>Sub-total H</b> (24 + ½ 25)		26				
<b>Adjusted Sub-total H</b> if financial year is not a 12 month period to produce an annual figure		27				
Division of Sub-total H (or adjusted Sub-total H if appropriate)	Other than health insurance	Up to and including sterling equivalent of 50M EURO x 0.18	28			
		Up to and including sterling equivalent of 50M EURO x 0.18	29			
	Health insurance	Up to and including sterling equivalent of 50M EURO x 0.06	30			
		Excess (if any) over 50M EURO x 0.16 / 3	31			
<b>Sub-total I</b> (28+29+30+31)		32				

**General insurance business : Calculation of required margin of solvency - first method and brought forward**

Name of insurer

Global business/UK branch business/EEA branch business

Financial year ended

Company registration number	GL/UK/CM	Period ended		Units
		day	month	
<b>R11</b>				<b>£000</b>

		This financial year	Previous year
		1	2
<b>Sub-total J</b> (greater of sub-total B and Sub-total I)		<b>40</b>	
Claims paid in period of 3 financial years		<b>41</b>	
Claims outstanding carried forward at the end of the 3 year period	For insurance business accounted for on an underwriting year basis	<b>42</b>	
	For insurance business accounted for on an accident year basis	<b>43</b>	
Claims outstanding brought forward at the beginning of the 3 year period	For insurance business accounted for on an underwriting year basis	<b>44</b>	
	For insurance business accounted for on an accident year basis	<b>45</b>	
<b>Sub-total C</b> (41+42+43-44-45)		<b>46</b>	
Amounts recoverable from reinsurers in respect of claims included in Sub-total C		<b>47</b>	
<b>Sub-total D</b> (46-47)		<b>48</b>	
<b>First result</b> Sub-total J x $\frac{\text{Sub-total D}}{\text{Sub-total C}}$ (or, if $\frac{1}{2}$ is a greater fraction, x $\frac{1}{2}$ )		<b>49</b>	
Provisions for claims outstanding (before discounting and net of reinsurance)		<b>50</b>	
<b>Brought forward amount</b> (12.43.2 x 50.1 / 50.2 or, if less, 12.43.2)		<b>51</b>	
Greater of lines 49 and 51		<b>52</b>	

**General insurance business : Calculation of required margin of solvency - second method, and statement of required minimum margin**

Name of insurer

Global business/UK branch business/EEA branch business

Financial year ended

		Company registration number	GL/UK/CM	Period ended			Units
				day	month	year	
		<b>R12</b>					<b>£000</b>
				This financial year	Previous year	Source	
				<b>1</b>	<b>2</b>	Form	Line
						Column	
Reference period (No. of financial years) Insert "0" if there is no reference period otherwise insert "3" or "7"		<input type="text"/>	<b>11</b>			See instruction 1	
Claims paid in reference period			<b>21</b>				
Claims outstanding carried forward at the end of the reference period	For insurance business accounted for on an underwriting year basis		<b>22</b>				
	For insurance business accounted for on an accident year basis		<b>23</b>				
Claims brought forward at the beginning of the reference period	For insurance business accounted for on an underwriting year basis		<b>24</b>				
	For insurance business accounted for on an accident year basis		<b>25</b>				
<b>Sub-total E</b> (21+22+23-(24+25))			<b>29</b>				
<b>Sub-total F</b> Conversion of Sub-total E to annual figure (Multiply by 12 and divide by number of months in reference period)			<b>31</b>				
Division of Sub-total F	Other than health insurance	Up to and including sterling equivalent of <del>7M</del> <u>35M</u> EURO x 26/100	<b>32</b>				
		Excess (if any) over <del>7M</del> <u>35M</u> EURO x 23/100	<b>33</b>				
Health insurance	Up to and including sterling equivalent of <del>7M</del> <u>35M</u> EURO x 26/300		<b>34</b>				
	Excess (if any) over <del>7M</del> <u>35M</u> EURO x 23/300		<b>35</b>				
<b>Sub-total G</b> (32 to 35)			<b>39</b>				
<b>Second result</b> Sub-total G x $\frac{\text{Sub-total D}}{\text{Sub-total C}}$ (or, if $\frac{1}{2}$ is a greater fraction, x $\frac{1}{2}$ )			<b>41</b>				
Higher of First result and Brought forward amount			<b>42</b>			11	52
Required margin of solvency (the higher of lines 41 and 42)			<b>43</b>				
Minimum guarantee fund			<b>44</b>				
Required minimum margin (the higher of lines 43 and 44)			<b>49</b>				

### **Instructions for completion of Form 11**

1. Entries in column 2, lines 17-20 and lines 28-31 must be the corresponding entries in column 1 of the form for the previous *financial year*, even if the amount in Euro in the description of the form has changed.
2. 51.2 must be 11.51.1 from the previous year's *return*.
3. If the *financial year* began before 1/1/2004, then the entries in column 2, lines 14, 22-32 and 51 must be blank, and the amounts in column 2, lines 41-45 must relate to a period of 1 *financial year*.
4. Entries in column 2, lines 17-20 and 28-31 must be the corresponding entries in column 1 of the form for the previous *financial year*, even if the amount in Euro in the description of the lines has changed.

### **Instructions for completion of Form 12**

1. Entries in column 2, lines 32-35 must be the corresponding entries in column 1 of the form for the previous *financial year*, even if the amount in Euro in the description of the lines has changed.
2. If the *insurer* has not been in existence long enough to acquire a reference period, lines 21 to 41 must be ignored.
3. *Claims*, provisions and recoveries included in lines 21 to 25 in respect of *classes* 11, 12 and 13 must be increased by 50%. Statistical methods may be used to allocate the *claims*, provisions and recoveries in respect of these *classes*. If the *financial year* began before 1 January 2004, then this instruction does not apply to column 2.

### **Instructions for completion of Forms 11 and 12**

1. In the case of a *marine mutual* completing an abbreviated *return* under rule 9.36A, units must be the same as those used in Form M1. If units are in US\$ or US\$000, then references to the sterling equivalent of Euro in lines 15 to 17 of Form 11 and lines 32 to 35 of Form 12 must be taken to be references to the US\$ equivalent of the specified amount of Euro and the Forms must be amended to reflect the use of US\$. The bases of conversion adopted must be stated by way of a supplementary note to the Forms. 2. If the *insurer* has not been in existence long enough to acquire a reference period, lines 21 to 41 must be ignored.
2. ~~If the *insurer* has not been in existence long enough to acquire a reference period, lines 21 to 41 must be ignored.~~

Form 13 of Appendix 9.1 (Balance sheet and profit and loss account) is amended as follows:

### Instructions for completion of Form 13

...

13. Since the *technical provisions for claims* outstanding shown in **Form 15** may only be discounted or reduced to take account of investment income in limited circumstances, the amount shown at line 12 of **Form 15** may need to be increased (see instruction 4 to **Form 15**). In such cases, the *reinsurers' share* shown at line 61 must be adjusted to be consistent with the amount shown in line 12.

Form 15 of Appendix 9.1 (Balance sheet and profit and loss account) is amended as follows:

### Instructions for completion of Form 15

...

4. The amount shown in line 12 may only be discounted or reduced to take account of investment income:
- (a) for *Class 1 or 2 business*; or
  - (b) in respect of annuities; or
  - (c) if the *insurer is a pure reinsurer* which does not have permission under the *Act to effect contracts of reinsurance*.

So, if the *technical provisions for claims* outstanding for other business are discounted or reduced to take account of investment income, then they must be increased by the difference between the undiscounted and the discounted provisions. If *technical provisions* are increased the amount of the increase must be shown by way of a supplementary note to this form, together with the corresponding increase in the *reinsurer's share* shown in line 61 of **Form 13**.

Appendix 9.4

### ABSTRACT OF VALUATION REPORT PREPARED BY APPOINTED ACTUARY (FORMS 46 TO ~~61~~60)

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All the Forms included in the part of the *return* to which this Appendix relates (**Forms 46 to 49, 51 to 58, and ~~60 and 61~~**) are to be laid out as shown in the Appendix, except that the instructions to Forms need not be reproduced.

...

23. (1) A statement of the *required minimum margin for long-term insurance business* in the form set out in **Form 60** and of the *required margin of solvency for Class IV business and supplementary accident and sickness insurance* in the form set out in **Forms 60-11 and 12**, in accordance with instruction 8 for completion of **Form 60**. When completing Forms 11 and 12, the accounting conventions appropriate for general insurance business should be followed, but reasonable approximations may be used if they are unlikely to result in an underestimate of the required margin of solvency.
- (2) If the gross annual office premiums for *Class IV business and supplementary accident and sickness insurance* in force on the ‘valuation date’ do not exceed 1% of the gross annual office premiums in force on that date for all *long-term insurance business*, **Forms 11 and 12** ~~61~~ need not be completed as long as it can be stated that the entry in line 10 of **Form 60** exceeds the amount that would be obtained if **Forms 11 and 12** ~~61~~ were to be completed. In this circumstance, the method of estimating the entry in line 10 of **Form 60**, together with a statement of the gross annual office premiums in force at the ‘valuation date’ in respect of *Class IV business and supplementary accident and sickness insurance*, must be given.)

## FORMS

[Forms 46 – ~~61~~ **60** to follow]

...

### Instructions for completion of Forms 51, 52, 53 and 54

...

8. ...

and particulars must also be shown of any supplementary provisions within *general insurance business class 1 or 2* which by virtue of the ~~Authorisation Manual~~ *AUTH* are to be taken to be included in *long-term insurance business of any class* (Supplementary *accident and sickness insurance* see ~~Form 61~~).

Form 61 of Appendix 9.4 (Abstract of valuation report prepared by appointed actuary) is deleted and form 60 is amended as follows:



Long term insurance business: Required minimum margin

Name of insurer

Global business/UK branch business/EEA branch business

Company registration number: **R60**  
 GL/UK/CM: \_\_\_\_\_  
 Period ended: \_\_\_\_\_ day \_\_\_\_\_ month \_\_\_\_\_ year  
 Units: \_\_\_\_\_

Class	Classes I, II and IX		Class III business with relevant factor of				Classes VII and VIII business with relevant factor of				Unallocated additional mathematical reserves with relevant factor of				Total for all classes			
	4%	1%	4%	1%	Nil Expense Related	Total	4%	1%	4%	1%	Nil Expense Related	Total	4%	1%	4%	1%	The financial year	The previous year
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
<b>Relevant factor (instruction 1)</b>																		
Reserves before distribution of surplus																		
Reserves for bonus allocated to policyholders																		
Reserves after distribution of surplus																		
Mathematical reserves before deduction of reinsurance																		
Mathematical reserves after deduction of reinsurance																		
Ratio of 16 to 13 or 0.85 if greater (see instruction 2)																		
Required margin of solvency - first result = (line 13) * (line 17) * relevant factor																		
Required margin of solvency based on net administrative expenses (see instruction 7)																		
Temporary assurances with required margin of solvency of 0.1%																		
Temporary assurances with required margin of solvency of 0.15%																		
All other assurances with required margin of solvency of 0.3%																		
<b>Total (21 to 23)</b>																		
Non negative capital at risk after reinsurance (all contracts) (see instruction 3)																		
Ratio of line 31 to line 29, or .50 if greater																		
Required margin of solvency - second result (see instruction 4)																		
Sum of first and second results and line 20 (19+20+39)																		
Required margin of solvency for supplementary Accident and Sickness Insurance and Class V business and the additional margin for Class IV business																		
Total required margin of solvency for long term insurance business (49+51)																		
<b>Minimum guarantee fund</b>																		
Required minimum margin (greater of lines 59 and 61)																		

## Instructions for completion of Form 60

1. The appropriate factors must be as specified in rules 2.5(2)(a) and 2.6(3) and (4).
2. For a *pure reinsurer*, the factor of 0.85 is replaced by 0.50.
3. Capital at risk must be shown after distribution of surplus.
4. Line 39 equals line 32 x [line 21 x 0.1% + line 22 x 0.15% + line 23 x 0.3%] for *classes* I, II and IX or line 32 x line 29 x 0.3% for *class* III, VII and VIII.
5. Any additional *mathematical reserves* ~~referred to~~ shown in the supplementary note to Form 14 line 63 (made in accordance with instruction 7 paragraph 4 of the instructions for completion of that Form) must be included at columns 11 or 12, as appropriate.
6. For *class* V business, the amount of the *required margin of solvency* must be stated in a supplementary note to the Form and must be included in line 51.
7. For business of *classes* III, VII and VIII, as specified in rule 2.6(4), the entry at line 20 is 25% of the *financial year's* net administrative expenses pertaining to business for which the *insurer* bears no investment risk and the allocation to cover *management expenses* is not fixed for a period exceeding five years.
8. For supplementary accident and sickness insurance and *class* IV business taken together, Forms 11 and 12 must be completed and appended to Form 60 (unless the Forms would be blank or paragraph 23(2) of Appendix 9.4 permits the firm not to complete the Forms). Lines 44 and 49 of Form 12 should be left blank. For the purposes of these Forms "health insurance" is health insurance based on actuarial principles that meets the conditions set out in paragraph 7 of Appendix 2.1. The entry at line 51 of Form 60 must equal the entry at line 43 of Form 12 plus the amount to be included for *class* V business (see instruction 6).

## VOLUME 3

### Guidance Note 2.1

#### HYBRID CAPITAL: ADMISSIBILITY FOR SOLVENCY

...

5. The ~~Third Life and Third Non Life Directives~~ Insurance Directives allow the value of ~~four~~ six types of hybrid capital to count as cover for the ~~required margin of solvency~~. They are the following -

- subordinated members' accounts (in the case of a *mutual*);
- unpaid share capital (or initial fund of a *mutual*);
- in the case of a *mutual* which is a *general insurer* with variable contributions, claims against its members by way of calls for supplementary contributions;
- dated subordinated loan capital;
- perpetual subordinated loan capital; and
- perpetual *securities* with defined characteristics.

...

13. The instruments must at a minimum be compatible with the provisions in Article 16(4) of the *First Non-Life Directive* and Article 18(1) 27 of the ~~First Life Directive~~ Life Directive (2002/83/EC) as appropriate.

14. ~~Indent 1~~ of Article 16(4) sets out the terms relevant for subordinated members' accounts (relevant only to *mutuals* and referred to in this Guidance as the **member's account**). ~~Indent 7~~ Paragraph 3 of the same article specifies the minimum conditions for subordinated loan capital; ~~indent 8~~ and defines the basic terms for the perpetual security. The latter two forms of hybrid capital can be issued by all *insurers*. The terms of Article 18(1) are identical in this respect. Paragraph 4 of both articles sets out the minimum requirements for unpaid share capital (or initial fund) some of which may be counted once the paid-up part amounts to 25% of the share capital or fund, up to 50% of the lesser of the margin of solvency and the required margin of solvency. For general insurers, under Article 16(4), in the case of mutuals with variable contributions, claims by way of calls for supplementary contributions within the financial year may be taken into account up to ½ of the difference between the maximum contributions and the contributions actually called in, subject to a limit of 50% of the lesser of the margin of solvency and the required margin of solvency.

14A. (a) Accordingly, a waiver from rule 2.10(2) may be granted where -

- (i) an insurer has issued shares some or all of which are not 'fully paid' and the total paid up value of all the shares is equal to or greater than

one quarter of their nominal value or, in the case of *shares* issued at a premium, of the aggregate of their nominal value and the premium; or

(ii) at least one quarter of the initial fund of a *mutual* is paid up; but

(b) the value of the waiver cannot exceed the lesser of –

(i) 50% of the total value of the amounts unpaid; and

(ii) 50% of the lesser of the *margin of solvency* and the *required margin of solvency*.

14B. In the case of a *mutual* with variable contributions carrying on *general insurance business*, a waiver from rule 2.10(4) may be granted for claims which the *mutual* has against its members by way of calls for supplementary contributions for a *financial year*, but the value cannot exceed the lesser of -

(a) 50% of the difference between the maximum contributions and the contributions called in; and

(b) 50% of the lesser of the *margin of solvency* and the *required margin of solvency*.

...

25. As far as hybrid capital is concerned, *insurers* will probably be permitted to count the value of loan capital instruments (the aggregate value of all such instruments) as cover for solvency up to 50% of the lesser of their *margin of solvency* and their *required margin of solvency*. Within this overall limit, the value of term stocks (in aggregate) may count for a maximum of 25% of the lesser of the *margin of solvency* and the *required margin of solvency*. An issue the value of which is in excess of this is unlikely to be permitted to count for the purposes of solvency and should continue to be treated as liabilities under the *Determination of Liabilities Rules*.

26. The above should apply in respect of the *long-term* and *general insurance business* of a composite *insurer*, the limits applying to each margin separately where the funds are applied exclusively for the benefit of one or other type of business. Where such an *insurer* wishes to apply the funds raised to its business as a whole (*general* and *long-term insurance business*), the limits set out in the previous paragraph may be permitted to apply to the aggregate of the lesser of the *margins of solvency* and required margins for both types of business.

Guidance Note 2.2

**GUIDANCE ON (SET OUT AS PER IPRU (INS)APPLICATIONS FOR WAIVERS RELATING TO IMPLICIT ITEMS)**

...

5. ~~The proposed Solvency I Life Directive (2002/83/EC) was published by the EU Commission in October 2000 and a final directive has now been adopted (Directive 2002/12/EC of 5 March 2002, OJ L 77/11, 20.3.2002). This directive requires member states to end a firm's ability to take into account future profits *implicit items* by (at the latest) 31 December 2009. Until then, from a time to be established by member states under transitional provisions in the directive 20 March 2007, the maximum amount of these economic reserves that can count will be limited to 25% of the lesser of the available solvency margin *margin of solvency* and the required solvency margin *required margin of solvency*, and the 'average period to run' will be limited to 6 years. This guidance does not anticipate the new limits. The FSA will consult on the implementation of new limits in due course. However, waivers will typically only be granted for a maximum of 12 months and firms will need to consider the potential impact of these future changes when engaging in future capital planning. Under rule 2.10(5), the FSA requires an insurer applying for a waiver to submit a plan as to how it intends to comply with the new limits.~~

...

8. Hidden reserves are net reserves resulting from the underestimation of assets and overestimation of liabilities (other than *mathematical reserves*) in so far as such reserves are not of an exceptional nature.

...

18A. An actuarial report is required to be submitted under rule 2.10(5). The Life Directive (2002/83/EC) prohibits the FSA from allowing *implicit items* for future profits to be valued unless:

- an actuarial report is submitted to the FSA substantiating the likelihood of emergence of these profits in the future; and
- that part of future profits emerging from hidden net reserves has not already been taken into account.

...

41. The FSA will grant waivers permitting *implicit items* due to hidden reserves only in very exceptional circumstances. These items relate to hidden reserves resulting from the underestimation of assets and overestimation of liabilities (other than *mathematical reserves*). The *Valuation of Assets Rules and Determination of Liabilities Rules* which apply to assets and liabilities other than *mathematical reserves* are based on current value with adjustments for regulatory prudence such as concentration limits for large holdings, and would not normally be expected to contain hidden reserves.

...

After Guidance note 2.2, insert the following new guidance note:

Guidance Note 2.3

## **SOLVENCY MARGIN: IMPLEMENTATION OF SOLVENCY 1 DIRECTIVES**

1. Rule 2.10(7) does not cover unexpired risk reserves and does not apply to long-term insurance business.
2. Some insurers carrying on long-term insurance business write or have written contracts that combine Class IV insurance business with another Class of long-term insurance business: for instance they might offer critical illness benefits in conjunction with a Class I contract. For the purpose of calculating their required margin of solvency, such insurers will need to allocate their premiums and claims between Class IV and other Classes. As stated in paragraph 23(1) of Appendix 9.4, reasonable approximations may be used if they are unlikely to result in an underestimate of the required margin of solvency.

Guidance Note 9.1

## **PREPARATION OF RETURNS**

...

### **Calculation of required margins of solvency (Forms 11 and 12)**

#### Margins of Solvency

5.3 ...

- (6) The *Margin of Solvency Rules* lay down that the required margins of solvency ~~margins of solvency~~ are to be calculated as the highest result from the application of ~~three~~ four alternative methods. These are the premium basis, the brought forward amount, the claims basis and the *minimum guarantee fund*. The first two methods ~~is~~ are shown on **Form 11** and the latter two methods together with the comparison of all ~~three~~ methods are shown on **Form 12**.

Form 11: the first method (i.e. the premium basis)

- (7) Lines 11 and 22: determine the **gross premium receivable** and gross premiums earned in the *financial year*.
  - (a) ‘gross premium’ means premiums after deduction of discounts, refunds and rebates of premium and before deduction of premiums for *reinsurance* ceded and of commission payable. It includes premiums

receivable from *reinsurance* contracts accepted by the *insurer*. In effect, this has the same meaning (subject to one important exception described in (d)) as *gross premiums written* as it occurs in the other forms in the *return*.

- (b) the amount of gross premium to be taken is limited by the words 'receivable' and means recorded in the company's books as due to the *insurer* in respect of risks incepted in the *financial year*. Policies transferred to an *insurer* under Part VII of the *Act* (or a transfer under the equivalent law of another *EEA State*) should be considered to be incepted on the date of transfer.
  - (c) as a result subject to the exception described in (d), gross premiums receivable may be treated as being the same as that portion of *gross premiums written* which is in respect of risks incepted in the *financial year*. This may be derived from the other forms in the *return* as follows: take the sum of the entries in columns 1 and 2 for lines 13 to 15 on all **Forms 21** and of the entry at line 11 for the current underwriting year on all **Forms 24**. In algebraic notation this is:  $\Sigma (21.13.1 + 21.13.2 + 21.14.1 + 21.14.2 + 21.15.1 + 21.15.2)$  for all **Forms 21** +  $\Sigma 24.11.(mm-yy)$  for all **Forms 24**; where mm-yy is the current *financial year*.
  - (d) the exception in (c) occurs where premiums receivable are excluded from *gross premiums written* as shown in **Forms 21** and **24** by virtue of the rule in paragraph 26 of **Appendix 9.2**. This says that amounts in respect of inwards and outwards *contracts of insurance* must be classified for inclusion in **Forms 20** to **39** according to their economic substance in accordance with generally accepted accounting practice. This, in effect, means that the accounting treatment for so-called financial reinsurances is to be the same in these *return* forms as in the *Companies Act* accounts. This is explained more fully in 8.2.2. The point to note here is that even where, under this rule, the consideration receivable under a *contract of insurance* is not classified as *gross premiums written* for the purposes of those *FSA* forms, it must be included as premiums receivable on **Form 11**. The **Form 11** premiums receivable should include all consideration receivable in respect of contracts which constitute carrying on *insurance business* under the *Act*, and which therefore require authorisation.
- (8) Lines 12 and 23: deduct premium taxes and levies, but only to the extent that: (i) in the case of taxes they are included in premiums and (ii) in respect of levies they are related to premiums and are recorded in the *insurer's* books as payable in the appropriate last preceding financial year or years in respect of *general insurance business* - see paragraph 2 of **Appendix 2.1**. Under generally accepted accounting practice the UK Insurance Premium Tax is excluded from the amount shown for premiums. It should not, therefore, be deducted at line 12 on the form. The anticipated Financial Services Compensation Scheme levy in respect of business written or earned during the

year may be deducted, but only to the extent that a provision for that anticipated liability has been established.

(8A) Lines 14 and 25: statistical methods may be used to allocate the premiums in respect of *classes* 11, 12 and 13.

(9) Lines ~~14~~16 and 27: adjust the sub-total derived from the above to an annual figure if the *financial year* runs for more or less than 12 months.

(10) Lines ~~15 17 to 19~~20 and 28 to 31: (i) analyse the amount arrived at in lines ~~14 16 and 27~~ between other and health insurance based on actuarial principles; (ii) in the case of each amount, if appropriate, if the amount arrived at is more than 50 million Euro, divide into two portions of ~~40 50 million Euros~~ and the excess over ~~40 50 million such units~~ and (iii) apply the appropriate percentages (18, 16, 6 or  $5\frac{1}{3}$ , as the case may be) to the totals arrived at, and add together the resultant sums to determine the *Sub-total B* - see paragraphs 4 to 8 of **Appendix 2.1**. The *FSA* will advise, if requested, whether business carried on under a particular policy falls within the definition of health insurance based on actuarial principles. The £/Euro rate of exchange to be used is that prevailing at the previous 31 October and is advised to *insurers* each year in an *FSA* market letter.

(11) Lines ~~21 to 29~~41 to 46: Determine (i) gross ~~claims paid~~ claims in the relevant period of 3 financial year years; (ii) gross ~~claims outstanding~~ claims carried forward; and (iii) gross ~~claims outstanding~~ claims brought forward. Determine the gross ~~claims~~ claims incurred, *Sub-total C*, as (i) plus (ii) less (iii).

(a) *claims* paid and *claims* outstanding are defined in detail by paragraphs 10 to 11 of **Appendix 2.1**. In essence they refer to the amounts recorded in the *insurer's* books as -

(i) paid in full or partial settlement of or set aside as likely to be sufficient to meet *claims* under *contracts of insurance*; or as

(ii) expenses incurred or set aside as likely to be incurred which are directly attributable to the settlement of individual *claims*; less

(iii) related salvage recoveries, recoveries from third parties and recoveries from other *insurers* (but not *reinsurance* recoveries).

(b) the definition of *claims* outstanding includes the provision for *claims* incurred but not reported.

(c) although the rules are not expressed in these terms, the definitions in (11) of *claims* paid and *claims* outstanding are equivalent (subject to one important exception described in (f)) to the corresponding amounts included in **Forms 22** and **25**, but excluding the *claims* management costs.



- (d) for *claims* paid, the equivalent amount is the sum of the amounts at lines 11 and 15 in column 2 in all **Forms 22** and of the amounts line 21 of the total column in all **Forms 24**. In algebraic notation this is:  $\Sigma (22.11.2 + 22.15.2)$  for all **Forms 22** +  $\Sigma 24.21.(99-99)$  for all **Forms 24**.
- (e) for *claims* outstanding, the equivalent amount is the sum of the amounts at lines 11 and 15 in column 3 in all **Forms 22** and of the amounts lines 11 and 13 of the total column in all **Forms 25**. In algebraic notation this is:  $\Sigma (22.11.3 + 22.15.3)$  for all **Forms 22** +  $\{25.11.(99-99) + 25.13.(99-99)\}$  for all **Forms 24**. (NB. for an *insurer* which discounts its *claims* outstanding this requires that the undiscounted provision be taken.) If necessary the brought forward amount (here and on **Form 12**) should be restated as undiscounted.
- (f) the exception referred to in (c) arises for the same reason as described in 7(d). Amounts are classified for inclusion in **Forms 22, 24** and **25** according to their economic substance in accordance with generally accepted accounting practice. However in **Forms 11** and **12** *claims* paid and *claims* outstanding should include all amounts paid or set aside for *claims* under contracts which constitute carrying on *insurance business* under the *Act*, and which therefore require authorisation, even where such amount are not classified as *claims* paid under generally accepted accounting practice.
- (12) Lines ~~30 to 39~~ 47 and 48: determine the net claims incurred, *Sub-total D*, by deducting from the gross *claims* incurred, *Sub-total C*, the total sum recoverable in respect of that amount under *reinsurance* contracts ceded, see paragraph 12 of **Appendix 2.1**. Line ~~30~~ 47 should only include amounts classified for inclusion as *reinsurance* in **Forms 22, 24** and **25** according to their economic substance in accordance with generally accepted accounting practice except that where gross premium has been included in line 11 only by virtue of 11(1), all *reinsurance* of that gross premium (whatever its economic substance) may be included in *Sub-total C*.
- (13) Line ~~41~~ 49: determine the *first result* by multiplying the *Sub-total B* J by the ratio of the *Sub-total D* to the *Sub-total C*, (or if that fraction is less than one half, by one half; or if the fraction is more than one, by one). See paragraph 13 and 14 of **Appendix 2.1**.

Form 11 (the brought forward amount)

- (13A) The provisions for *claims* outstanding shown in line 50 are to be net of *reinsurance*. The guidance in sub-paragraphs (11) and (12) applies, except that despite (11)(e), claims that are discounted will not need to be restated as undiscounted if they are in respect of *class 1* or *2* business or for annuities or if the firm is a *pure reinsurer* that does not have *permission* to effect *contracts of insurance*. The brought forward amount in line 51 is then the lower of the

required margin of solvency that applied during the financial year in question and that amount multiplied by the ratio of the claims outstanding at the end of that financial year to the claims outstanding at the beginning of that financial year.

Form 12: the second (i.e. the claims basis)

- (14) Determine the reference period. If an *insurer* has not been in existence long enough to acquire a reference period this should be indicated by entering a zero at the box in line 11 and lines 21 to 41 ignored. For the majority of *insurers* the reference period will be the last three *financial years*. See paragraphs 1 and 2 of **Appendix 2.2**.
- (15) Establish the amount of claims incurred in a similar way to that explained in (11), ~~but related throughout to the reference period rather than to the financial year~~. For example where the reference period is the last three *financial years* the *claims* incurred should be derived (using the formulae described in (11)) from the amounts reported in the *returns* for those last three years - see paragraph 3 of **Appendix 2.2**. However it is acceptable to restate amounts of *claims* incurred for currency movements.
- (16) Claims, provisions and recoveries in respect of classes 11, 12 and 13 must be increased by 50%. Statistical methods may be used to allocate the claims, provisions and recoveries in respect of these classes. Reduce the sum derived to an annual figure by multiplying by 12 and dividing by the number of months in the reference period.
- (17) Lines 32 to 39: (i) analyse *Sub-total F* between other and health insurance based on actuarial principles ; (ii) in the case of each amount, if ~~appropriate~~ the amount is more than 35 million Euro, divide into two portions of 7 35 million Euros and the excess over 7 35 million Euros and (iii) apply the appropriate percentages (26, 23, 8.66 or 7.66, as the case may be) to the totals arrived at and add together the resultant sums to determine *Sub-total G* - see paragraphs 5 to 9 **Appendix 2.2**. The definition of health business and the £/Euro rate of exchange are the same as apply in (10).
- (18) Line 41: determine the *second result* by multiplying *Sub-total G* by the ratio of *Sub-total D* to *Sub-total C*, (or if that fraction is less than one half, by one half; or if the fraction is more than one, by one). See paragraphs 13 and 14 of **Appendix 2.1**.

**Analysis of admissible assets (Form 13)**

Different types of Form 13

5.4 (1) ...

Completion of the Form

...

- (15A) The amount at line 61 will need to be adjusted to remove any discount to take account of investment income on business where this adjustment has been made to the gross provision (see instruction 13 to **Form 13** and paragraph 5.6(6)).

...

## **Liabilities – other than long term business (Form 15)**

### Completion of the Form

5.6 (1) ...

### Determination of liabilities

...

- (6) The requirement in (4)(a) that generally accepted accounting concepts be used means, in effect, that the liabilities at lines 11 to 59 are to be valued for the *returns* in the same way as for the *Companies Act* accounts, except in relation to the *technical provisions for claims* outstanding. For *technical provisions* this is indeed explicitly stated by rule 5.4, which refers to the rules in Section D of Chapter II of Schedule 9A to the *Companies Act*. Rule 2.10(7), however, requires that (with certain exceptions) the *margin of solvency* be reduced by the difference between the discounted (to take account of investment income) and undiscounted *technical provisions for claims* outstanding. Instruction 4 to the form (and instruction 13 to **Form 13**) therefore requires the amounts at line 12 of **Form 15** and line 61 of **Form 13** to be increased to show amounts that are undiscounted. The adjustment is not required for *pure reinsurers which do not have permission under the Act to effect contracts of insurance*. Nor is it required in relation to annuities or *Class 1 or 2* business.

...

### Supplementary notes

- (15) Five ~~Four~~ supplementary notes are specified:

...

- (e) Where *technical provisions for claims* outstanding have to be increased in accordance with instruction 4 to **Form 15** to remove discounting, the amount of the increase, together with the corresponding increase in the *reinsurer's* share shown in line 61 of **Form 13**, must be shown. [Code 1505].

...

**Paragraph 23 - Forms 60, 11 and 12 to 61**

- 15.10 (1) **Forms 60 and 61, together with Forms 11 and 12** if required, set out the calculation of the *required minimum margin* (i.e. the greater of the *required margin of solvency* and the *minimum guarantee fund*) for *long-term insurance business*. The legislation provides for a solvency margin in respect of an *insurer's long-term insurance business* as a whole and where more than one *long-term insurance business* fund is maintained the information in **Forms 60 and 61** these forms will relate to all funds combined, including industrial business where this is transacted. Provision is made for the *mathematical reserves* and the calculation of the solvency margin to be shown separately for the main classes of *long-term insurance business* and, for the purposes of reconciliation, *mathematical reserves attracting a nil rate of where the solvency margin is related to expenses* are to be included. *Class III* includes contracts where the benefits are partially linked to investment funds or indices and any reserves for non-linked benefits under such contracts, including those relating to *accumulating with profits* benefits, should be included under *Class III* business in the appropriate column in **Form 60**. The presence of non-linked benefits, including *accumulating with-profits* benefits, does not generally alter the appropriate column for linked benefits.
- (2) In **Form 60**, line 51 should equal the figure in line 59 of **Form 61**, together with any class V margin included in the note under instruction 6. Where supplementary accident and sickness insurance or *Class IV* business is written, they should be taken together for the purposes of **Forms 11 and 12**, and determining whether the de minimis limit in paragraph 23(1) is exceeded. It is recognised that accurate completion of **Forms 11 and 12** may not be easy or possible because the accounting conventions for *general insurance business* should be followed. We therefore expect reasonable approximations to be used, if they are unlikely to result in an underestimate of the *required margin of solvency*.

...

## Annex B

### Amendments to the Supervision manual

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### Issue of a consent notice to the Host State regulator

13.3.5 G ...

- (3) ~~If the *FSA* has required a financial recovery plan of a *UK firm* of the kind mentioned in paragraph 1 of article 38 of the Life Directive (2002/83/EC) or paragraph 1 of article 20a of the *First Non-Life Directive*, the *FSA* will not give a *consent notice* for so long as it considers that *policyholders*' rights are threatened within the meaning of paragraph 1.~~

...

#### Issuing a consent notice or notifying the Host State regulator

13.4.4 G ...

- (3) ~~If the *FSA* has required of a *UK firm* a financial recovery plan of the kind mentioned in paragraph 1 of article 38 of the Life Directive (2002/83/EC) or paragraph 1 of article 20a of the *First Non-Life Directive*, the *FSA* will not give a *consent notice* for so long as it considers that *policyholders*' rights are threatened within the meaning of paragraph 1.~~

...

...

18.2.25 G (1) If the transferee is (or will be) an *EEA firm* (authorised in its *Home State* to carry on *business* under the *Insurance Directives*) ...

- (2) ~~If the transferee is *authorised* in the *United Kingdom*, the *FSA* will need to certify that the transferee will meet its solvency margin requirements after the transfer. If the *FSA* has required of a *UK firm* a financial recovery plan of the kind mentioned in paragraph 1 of article 38 of the Life Directive (2002/83/EC) or paragraph 1 of article 20a of the *First Non-Life Directive*, the *FSA* will not issue a certificate for so long as it considers that *policyholders*' rights are threatened within the meaning of paragraph 1.~~

...

...

**2.12**

**Financial Recovery Plan**

2.12.1G

When:

- (1) the FSA has required a financial recovery plan within the meaning of article 20a of the *First Non-Life Directive*;
- (2) the FSA is of the view that *policyholders*' rights are threatened because the financial position of the *insurer* is deteriorating; and
- (3) the FSA decides to require the *insurer* to hold more capital than would otherwise be required under the *Handbook* to ensure that the *insurer* will be able to fulfil the *required margin of solvency* in the near future;

any such higher capital requirement will be based on the financial recovery plan.

...

## Annex C

### Amendments to the Glossary

Amend the following definition as shown (underlining indicates new text and striking through indicates deleted text).

*non-directive friendly society*

...

- (d) a *friendly society* (carrying on *long-term insurance business*):
- (i) whose articles of association contain provisions for calling up additional contributions from members or reducing their benefits or claiming assistance from other *persons* who have undertaken to provide it; and
  - (ii) whose annual gross premium income (other than from contracts of reinsurance) has not exceeded ~~euro 500,000~~ 5 million Euro for each of the three preceding financial years;
- (e) a *friendly society* (carrying on *general insurance business*) ~~whose~~:
- (i) whose registered rules contain provisions for calling up additional contributions from members or reducing their benefits; ~~and~~
  - (ii) whose gross premium income (other than from contracts of *reinsurance*) for the preceding *financial year* did not exceed ~~1,000,000 Euro~~ 5 million Euro; and
  - (iii) whose members provided at least half of that gross premium income;
- (f) a *friendly society* whose liabilities in respect of *general insurance contracts* are fully reinsured with or guaranteed by other mutuals (including *friendly societies*);

and in each case whose *insurance business* is limited to that described in any of (a) to (f).

**INTERIM PRUDENTIAL SOURCEBOOK FOR INSURERS  
(AMENDMENT NO 4) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 138 (General rule-making power);
  - (2) section 150(2) (Actions for damages); and
  - (3) section 156 (General supplementary powers).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 November 2003.

**Amendments to the Interim Prudential sourcebook for insurers**

- D. IPRU(INS) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Interim Prudential Sourcebook for Insurers (Amendment No 4) Instrument 2003.

By order of the Board  
18 September 2003



## Annex

### Amendments to Interim Prudential sourcebook for insurers

In this Annex, underlining indicates new text and striking through indicates deleted text.

5.3.A (1) Except to the extent that provision for the deficit has been made (whether in the calculation of *surplus assets* or otherwise) in another *group undertaking* the value of whose *shares* is ~~determined having regard to~~ taken to be the value of its *surplus assets* under rule 4.2(1) or (1A)(a) (but only to the extent of the *insurer's proportional share* of that undertaking), an *insurer* must make provision in respect of a *related undertaking* that is an *insurance undertaking* or *insurance holding company*:

- (a) where the *related undertaking* is also a *subsidiary undertaking* of the *insurer*, for the whole of any *solvency deficit*; and
- (b) in any other case, for the *insurer's proportional share* of any such deficit.

10.3 (1) ...

- (b) rule 4.2(2)(f) was replaced with “assets that cannot effectively be made available or realised to make good any deficiency of assets of the *ultimate insurance parent undertakings* or *ultimate EEA insurance parent undertakings*, as the case may be”; and

...

11.1 ...

<i>notional required minimum margin</i>	<ul style="list-style-type: none"> <li>(a) in the case of an <i>insurance undertaking</i> (other than a <i>pure reinsurer</i>) that has its head office in a <i>designated state or territory</i>, the amount of the <i>required minimum margin</i>, or <u>the equivalent requirement</u>, under the regulatory requirements of that state or territory;</li> <li>(b) in the case of a <i>pure reinsurer</i> that has its head office in a <i>designated state or territory</i>, the amount that would be the <i>required minimum margin</i>, or <u>the equivalent requirement under the regulatory requirements of that state or territory</u>, if the regulatory requirements of that state or territory applicable to undertakings carrying on <i>direct insurance business</i> were applied to the <i>pure reinsurer</i> <u>(whether they are or not)</u>; and</li> <li>(c) in all other cases, the amount of the <i>required minimum margin</i> that would apply if the <i>insurance undertaking</i> were an <i>insurer</i> with its head office in the United Kingdom (whether it is or not)</li> </ul>
---	---

**INVESTMENT ENTITIES (LISTING RULES AND CONDUCT OF  
BUSINESS) INSTRUMENT 2003**

**Powers exercised**

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):

- (1) section 74 (The official list);
- (2) section 75 (Applications for listing);
- (3) section 79 (Listing particulars and other documents);
- (4) section 80 (General duty of disclosure in listing particulars);
- (5) section 84 (Prospectuses)
- (6) section 96 (Obligations of issuers of listed securities);
- (7) section 138 (General rule-making power);
- (8) section 145 (Financial promotion rules);
- (9) section 147(1) (Control of information rules); and
- (10) section 149 (Evidential provisions).

B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

C. This instrument comes into force as follows:

- (1) the Listing Rules in Annex A, Part 1 come into force on 1 April 2005;
- (2) the Conduct of Business Miscellaneous Transitional Rule in Annex B and the amendments to the Conduct of Business sourcebook in Annex C come into force on 1 January 2004;
- (3) the remainder of this instrument comes into force on 1 November 2003.

**Amendments to the Listing Rules**

D. The Listing Rules are amended in accordance with Annex A, Parts 1 and 2 to this instrument.

**Amendments to the Conduct of Business sourcebook**

E. The Conduct of Business Transitional Rules are amended in accordance with Annex B to this instrument.

F. The Conduct of Business sourcebook is amended in accordance with Annex C to this instrument.

**Amendments to the Glossary**

G. The Glossary is amended in accordance with Annex D to this instrument.

**Citation**

H. This instrument may be cited as the Investment Entities (Listing Rules and Conduct of Business) Instrument 2003.

By order of the Board  
18 September 2003

## Annex A

### Amendments to Listing Rules

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### Part 1

#### Amendments coming into force on 1 April 2005

#### CHAPTER 21 INVESTMENT ENTITIES

...

#### Investment companies and investment trusts

Conditions for listing - investment companies other than investment trusts

21.9 An investment company (other than an investment trust) must comply with the conditions for listing, as set out in chapter 3, with the following modifications and additional conditions:

...

- (d) the board of directors (or equivalent body) of the investment company must be able to demonstrate that it will act independently of any investment managers of the investment company; in any event a majority must not be directors ~~or employees of or professional advisers to the~~ of other investment companies managed by any such investment managers or by any other company in the same group as any such the investment managers or be directors, employees, partners or other officers of or professional advisers to any such investment manager or any other company in the same group as any such investment manager;
- (e) ~~Paragraph deleted – August 1995~~ in any event, no more than one director, partner, other officer or employee of or professional adviser to each such investment manager or any other company in the same group as any such investment manager may be a director of the investment company; any such director shall be subject to annual re election by shareholders;
- (ee) the Chairman of the Board of the investment company must be free of conflicts of interest and independent of any investment managers of the investment company and any other company in the same group as any such investment manager and, in any event, he must not be a director of any other investment company managed by any of the same investment managers or any other company in the same group as any such investment manager or a director, employee, partner or other officer of or professional adviser to any such investment manager or any other company in the same group as any such investment manager;

...

**Part 2**  
**Amendments coming into force on 1 November 2003**

CHAPTER 21  
INVESTMENT ENTITIES

...

Investment companies and investment trusts

Conditions for listing - investment companies other than investment trusts

21.9 An investment company (other than an investment trust) must comply with the conditions for listing, as set out in chapter 3, with the following modifications and additional conditions:

- ...
- (j) except to the extent that the UK Listing Authority agrees, the distribution as dividend of surpluses arising from the realisation of investments must be prohibited and a provision to this effect must be contained in the issuer's memorandum or articles of association; ~~and~~
  - (k) paragraphs 3.18 to 3.21 (shares in public hands) do not apply to open-ended investment companies; and
  - (l) not more than 10%, in aggregate, of the value of the gross assets of the issuer at the time of admission may be invested in other listed investment companies (including listed investment trusts) except that this restriction shall not apply to investments in investment companies or trusts which themselves have stated investment policies to invest no more than 15% of their gross assets in other listed investment companies (including listed investment trusts).

Conditions for listing - investment trusts

21.10 An investment trust must comply with the conditions for listing set out in chapter 3 as amended by paragraph 21.9(a) to ~~(ee d)~~ and (l). In addition, an investment trust must comply with the requirements laid down for investment trusts in section 842 of the Income and Corporation Taxes Act 1988.

...

Listing particulars or equivalent offering document

21.13 An investment company (including an investment trust) must comply with the requirements relating to listing particulars or equivalent offering documents set out in chapter 5 as modified by this chapter and in the case of overseas companies by chapter 17. Listing particulars or equivalent offering documents must contain:

- (a) a detailed description of the investment policies to be followed;
- (aa) in a prominent position and in clear language:
  - (i) a description of the risks involved in investing in investment companies;
  - (ii) a description of risks that are specific to those securities to be listed, the company or its investment policy;
  - (iii) without prejudice to the generality of the foregoing, a statement of the extent to which the company proposes to borrow money to achieve its investment objectives, together with an explanation of the risks to the value of the company's securities associated with any such borrowing; and
  - (iv) in so far as the company proposes to invest in other companies or funds which themselves invest in a portfolio of investments and those companies or funds borrow or propose to borrow money to achieve their investment objectives, a description of the risks to the value of the company's securities associated with any such borrowing;

...

21.14 A newly formed investment company (including an investment trust) must include in its listing particulars or equivalent offering document:

- (a) ~~in the absence of an accountants' report, a statement by the directors of the date upon which the company was incorporated and registered and that the company has not traded and no accounts have been made up; and.~~
- (b) ~~a statement that its principal investment policies there set out will, in the absence of unforeseen circumstances, be adhered to for at least three years following listing, and that any material change in the policies within that period may only be made with shareholder approval.~~

...

#### Continuing obligations

21.20 An investment company (other than an investment trust) must continue to comply with paragraph 21.9(g) and (h). An investment company (including an investment trust) must continue to comply with paragraph 21.9(d), (e), (ee) and (l) and must comply with the applicable continuing obligations set out in the listing rules, modified by paragraphs 21.22 to 21.25 and, in the case of overseas companies, by chapter 17, save that:

- (d) in the case of an open-ended investment company which is an unrecognised scheme, any provision of this paragraph 21.20 requiring

such a company to publish information or a document to the public will be modified to require the sending of such information or document only to the UK Listing Authority and to other recipients permitted under the Act;

(dd) in addition to the requirements of Chapter 12 (financial information) the issuer (including an investment trust) must include in its annual report and accounts;

(i) a statement in a prominent position, as to whether in the opinion of the the Directors the continuing appointment of the investment manager on the terms agreed is in the interests of shareholders as a whole, together with a statement of the reasons for this view; and

(ii) a summary of the principal contents of any agreements between the investment company and each of the investment managers, including but not limited to any provisions relating to compensation payable in the event of termination of the agreement;

...

(i) in the case of an investment company (including an investment trust) with no executive directors:

(i) paragraph 12.43A(a) does not apply in respect of Combined Code principles B.1 to B.3;

(ii) paragraph 12.43A(b) does not apply in respect of Combined Code provisions B.1.1 to B.1.10, B.2.1 to B.2.6 and B.3.1 to B.3.5; and

(iii) paragraph 12.43A(c) does not apply; ~~and~~

(j) for an investment company (including an investment trust), dealings by directors and purchases by the company of its own securities during a close period which would otherwise be prohibited under the provisions of the Model Code, may be permitted if the UK Listing Authority is satisfied that all price sensitive information which the directors and the company may have in periods leading up to an announcement of results has previously been notified to a Regulatory Information Service. The UK Listing Authority must be consulted at an early stage-;

(k) any material change to the investment policies of an investment company (including an investment trust) may only be made with shareholders' approval; and

(l) an investment company (including an investment trust) must notify to a Regulatory Information Service;

- (i) within two business days of the end of each calendar month, a list of all investments in other listed investment companies (including listed investment trusts), as at the last business day of that month, which themselves do not have stated investment policies to invest no more than 15% of their gross assets in other listed investment companies (including listed investment trusts): and
- (ii) within two business days of the end of each quarter, a list of all investments with a value greater than 5% of the companies gross assets and at least the 10 largest investments as at the last business day of that quarter.



## Annex B

### Amendments to the Conduct of Business Miscellaneous Transitional Rules

After Miscellaneous Transitional Rule 10, insert the following new Transitional Rule.

<b>Risk warnings for listed securities involving gearing</b>					
11	COB 5.4.4E (6)	R	A <i>firm</i> , which acts as a discretionary <i>investment manager</i> for a <i>private customer</i> on 1 January 2004 will not contravene this <i>evidential provision</i> if it provides the relevant risk warning to those <i>customers</i> no later than when it provides a statement in accordance with COB 8.2.4R provided that this is done no later than 9 months after this <i>rule</i> comes into force.	1 January 2004	30 September 2004

## Annex C

### Amendments to the Conduct of Business sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 3.8.9 G ...
- (6) If the financial promotion relates to securities, or to an investment trust savings scheme for dealing in securities, in respect of which the conditions in (a), (b) and (c) are satisfied, then the firm should ensure that the risks associated with the relevant investment approaches in (b) are properly explained. The conditions are that:
- (a) The securities are
- (i) listed in the United Kingdom under chapter 21 of the listing rules (Investment entities); or
- (ii) issued by an investment trust and listed in an EEA State other than the United Kingdom;
- (b) the issuer of the securities in (a):
- (i) uses or proposes to use gearing as an investment strategy; or
- (ii) invests or proposes to invest in securities that satisfy the conditions in (a) and the issuer of such securities uses or proposes to use gearing as an investment strategy; and
- (c) the securities are likely to be subject to fluctuations in value which are significant compared with the likely fluctuations in value of the underlying investments.
- ...
- Examples of applications which could meet COB 3.9.15R
- 3.9.17 G ...
- (14) ... ;
- (15) (for a security or an investment trust savings scheme which satisfies the conditions specified in COB 3.8.9G(6)): 'This investment may be subject to sudden and large falls in value and you could get back nothing at all'.
- ...
- 4.2.15 E Table Content of terms of business provided to a customer: general requirements
- ...
- (16) ...

(f) a security or an investment trust savings scheme which satisfies the conditions specified in COB 3.8.9G(6);

...

5.4.4 E ... ~~COB5.4.6E to COB5.4.1011E~~ as appropriate

(5) ~~;~~

(6) a security or an investment trust savings scheme which satisfies the conditions specified in COB 3.8.9G(6) (see COB 5.4.11E).

...

Risk warnings in respect of listed securities where gearing is involved

5.4.11 E In relation to a transaction in a security or an investment trust savings scheme for dealing in securities which satisfies the conditions specified in COB 3.8.9G(6) a firm should provide to the private customer a notice to warn the private customer that the strategy which the issuer of securities uses or proposes to use may result in:

(1) movements in the price of the securities being more volatile than the movements in the price of underlying investments;

(2) the investment being subject to sudden and large falls in value; and

(3) the private customer getting back nothing at all if there is a sufficiently large fall in value in the investment.

...

6.5.14 G ...

(15) ~~;~~

(16) for a security or an investment trust savings scheme which satisfies the conditions specified in COB 3.8.9G(6), the fact that the investment may be subject to sudden and large falls in value and that the private customer may get back nothing at all if the fall in value is sufficiently large;

...

## Annex D

### Amendments to the Glossary

Insert the following new definitions in the appropriate alphabetical position:

- gearing* (in *COB*) a strategy, with a view to enhancing the return for, or the value of, a *security* without increasing the amount invested by the holders of the *security*, involving one or more of the following:
- (a) borrowing money;
  - (b) investing in one or more instruments, such as (but not limited to) *warrants* or *derivatives*, for which a relatively small movement in the value or price of the underlying rights or assets to which the instrument relates, whether favourable or adverse, results in a larger movement in the value or price of the instrument; and
  - (c) structuring the rights of holders of a *security* so that a relatively small movement in the price or value of the underlying rights or assets, whether favourable or adverse, results in a larger movement in the price or value of the *security*.

**CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT NO 14)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the powers listed in Schedule 4 to the Conduct of Business sourcebook.
- B. The rule-making powers listed in that Schedule are specified for the purpose of section 153(2) of the Financial Services and Markets Act 2000 (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 November 2003.

**Amendments to the Conduct of Business sourcebook**

- D. The Conduct of Business sourcebook is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Conduct of Business Sourcebook (Amendment No 14) Instrument 2003.

By order of the Board  
18 September 2003

## Annex

### Amendments to the Conduct of Business sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 7.1.4 E (1) For the purposes of *COB 7.1.3R*, a *firm* ~~may~~ should manage a conflict of interest by taking reasonable steps in one or more of the following ~~reasonable steps~~ ways:
- ~~(1)~~ (a) ~~disclosure~~ ing of an interest to a *customer*; or
  - ~~(2)~~ (b) relying on a policy of independence; or
  - ~~(3)~~ (c) establishing internal arrangements (*Chinese walls*); or
  - ~~(4)~~ (d) declining to act for a *customer*.
- (2) Contravention of (1) may be relied on as tending to establish contravention of *COB 7.1.3R*.
- (3) Compliance with (1) may be relied on as tending to establish compliance with *COB 7.1.3R*.

#### **Disclosuring of an interest to a customer**

- 7.1.5 ~~E-G~~ The following are examples of *material interest* or conflicts of interest that a *firm* should disclose under *COB 7.1.4E* (1):

...

- 7.1.6 E (1) In disclosing an interest to a *customer*, a *firm* should:
- ~~(1)~~ (a) disclose to the *customer*, either orally or in writing, any *material interest* or conflict of interest it has, or may have, whether generally or in relation to a specific transaction, before it advises the *customer* about the transaction or before it *deals* on behalf of the *customer* in the exercise of discretion in relation to the transaction; and
  - ~~(2)~~ (b) be able to demonstrate that it has taken reasonable steps to ensure that the *customer* does not object to that *material interest* or conflict of interest.
- (2) Contravention of (1) may be relied on as tending to establish contravention of *COB 7.1.3R*.
- (3) Compliance with (1) may be relied on as tending to establish compliance with *COB 7.1.3R*.

**Relying on a policy of independence**

7.1.7 G ~~When it is not practical for a *firm* to act in accordance with COB 7.1.6, it may~~ COB 7.1.4E (1)(b) recognises that a *firm* may demonstrate that it has taken reasonable steps to ensure fair treatment for its *customers* by relying on a policy of independence. If a *firm* relies on a policy of independence, that policy should:

...

...

...

8.1.15 E Content of a confirmation of transaction – general requirements  
This table belongs to COB 8.1.5E

Content of a confirmation of transaction – general requirements	
...	
3.	If the <i>firm</i> (other than the <i>operator of a regulated collective investment scheme</i> ) executed <del>the</del> a transaction <u>in a security</u> as <i>principal</i> , that fact.
...	
7.	The <del>unit price</del> <u>unit price</u> at which the transaction was <i>executed</i> , and, if the <del>unit price</del> <u>unit price</u> is averaged including any price set in accordance with COB 7.7.12R (Price of allocation), a statement of that fact.
...	
11.	<u>Except if the <i>firm</i> is the operator of a <i>collective investment scheme</i> (subject to COB 8.1.17E), the remuneration of the <i>firm</i> (other than the operator of a <i>regulated collective investment scheme</i> subject to COB 8.1.17E) and that of any <i>associate</i> (unless that <i>associate</i> is not obliged to disclose it to the <i>firm</i> under this provision, as a result of the <i>firm</i> being its <i>customer</i>, or otherwise) in connection with the transaction, distinguishing:</u>
	(a) ...
	(b) The basis on which the <i>commission</i> has been determined, unless:
	(i) all <i>commission</i> charged to the <i>customer</i> has already been disclosed to him; <u>or</u>
	(ii) <u>the basis has already been disclosed to him elsewhere;</u> and

	(c)	if the <i>firm</i> or an <i>associate</i> acted as <i>principal</i> in <i>executing</i> the transaction, and <u>the <i>firm</i> owes a duty of best execution, to its customer, the amount of any <i>mark-up</i> or <i>mark-down</i> imposed by the <i>firm</i> or its <i>associate</i>.</u> <del>unless the <i>firm</i> is the <i>operator</i> of a <i>regulated collective investment scheme</i>, in which case <i>CIS 8.5.6(3)R (Exemptions from liability to account for profits)</i> applies.</del>
...		
<p>Note: If the transaction was for an <i>intermediate customer</i>, the <i>firm</i> need not identify separately the <del><i>unit price</i></del> <u>unit price</u> and the <i>remuneration</i> of the <i>firm</i> and that of any <i>associate</i> in connection with the transaction, if the <i>intermediate customer</i> has requested a confirmation combining both of these items.</p> <p><u>Where the <i>firm</i> or its <i>associate</i> has <i>executed</i> the <i>customer order</i> against its own book, the <i>firm</i> need not, when disclosing <i>remuneration</i> under <i>COB 8.1.15E(11)</i>, disclose in the confirmation any trading or dealing profit which is not a <i>commission</i> or <i>mark-up</i> or <i>mark-down</i>.</u></p>		

8.1.16 E Content of a confirmation of transaction – additional content in particular circumstances  
This table belongs to COB 8.1.15E

<b>Content of a confirmation of transaction – additional content in particular circumstances</b>			
If the transaction involves:		The confirmation should state:	
...			
4.	a right to receive interest on an <i>investment</i> (for example, in relation to a <i>government</i> or <i>public security</i> );	(a)	if not part of the transaction price, <del>the amount of interest which</del> <u>the number of days or amount of interest which the purchaser is required to pay for (or the vendor is entitled to receive) as part of the total consideration.</u> entitled to receive; and any part of the total consideration which is specifically attributable to the right in (a);
		(b)	
...			



6.	a <i>security</i> which is not a <i>packaged product</i> or a <i>readily realisable security</i> and	how the <del><i>unit price</i></del> <u>unit price</u> of the transaction was arrived at: <u>or a statement that such information is available upon request.</u>
	(a) the <i>firm</i> acted as a <i>principal</i> in <i>executing</i> the transaction with the <i>customer</i> ; <del>and</del>	
	(b) there is no calculable <i>mark-up</i> or <i>mark-down</i> ; <u>and</u>	
	(c) the <i>firm</i> owes a <u>duty of <i>best execution</i></u> ;	

...

**MARKET CONDUCT SOURCEBOOK  
(AMENDMENT NO 6)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

**Commencement**

- B. This instrument comes into force on 1 October 2003.

**Amendments to the Market Conduct sourcebook**

- C. MAR 1 (The Code of Market Conduct) is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Market Conduct Sourcebook (Amendment No 6) Instrument 2003.

By order of the Board  
18 September 2003

## Annex

### Amendments to the Code of Market Conduct (MAR 1)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.11.2G Section 118(3) allows the Treasury to prescribe markets and *qualifying investments*. This is the purpose of the Financial Services and Markets Act 2000 (Prescribed markets and Qualifying investments) Order 2001. This Order, when read in conjunction with the *Act* makes certain kinds of *investment* “traded on” *prescribed markets qualifying investments*. The Treasury has prescribed all markets established under the rules of a *UK RIE* and the market known as OFEX as markets to which section 118 applies. The *prescribed markets* as at ~~16 January 2003~~ 30 June 2003, are:

(1) the markets established under the rules of the following (the UK RIEs):

(a) EDX London Ltd;

(b)~~(a)~~ The International Petroleum Exchange of London Limited;

(c)~~(b)~~ LIFFE Administration and Management;

(d)~~(c)~~ The London Metal Exchange Limited;

(e)~~(d)~~ London Stock Exchange plc (including AIM);

(f)~~(e)~~ OM London Exchange Limited;

(g)~~(f)~~ virt-x Exchange Limited;

(2) the market known as OFEX.

**TRAINING AND COMPETENCE SOURCEBOOK  
(AMENDMENT NO 6) INSTRUMENT 2003**

**Powers exercised**

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):

(1) section 138 (General rule-making power); and

(2) section 156 (General supplementary powers).

B. The provisions of the Act relevant to rules and listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

C. This instrument comes into force on 1 November 2003.

**Amendments to the Training and Competence sourcebook**

D. The Training and Competence sourcebook is amended in accordance with the Annex to this instrument.

**Citation**

E. This instrument may be cited as the Training and Competence Sourcebook (Amendment No 6) Instrument 2003.

By order of the Board  
18 September 2003

## Annex

### Amendments to the Training and Competence Sourcebook

In this Annex, underlining indicates new text.

#### TC 1 – Table: Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
...					
<u>5</u>	<u>TC 2</u>	<u>R</u>	(1) <u>TC2 does not apply to an <i>ex-section 43 firm</i> in respect of activities for which it would have been an exempted person under section 43 of The Financial Services Act 1986 before <i>commencement</i>.</u>	<u>From <i>commencement</i> for 48 months</u>	<u><i>Commencement</i></u>

**MORTGAGE FIRMS AND INSURANCE INTERMEDIARIES  
(APPLICATION FEES) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 156 (General supplementary powers);
  - (2) section 157(1) (Guidance); and
  - (3) paragraph 17(1) of Schedule 1 (Fees).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 November 2003.

**Amendments to the Handbook**

- D. The Authorisation manual (AUTH) is amended in accordance with Annex A of this instrument.
- E. The Supervision manual (SUP) is amended in accordance with Annex B of this instrument.
- F. The Glossary is amended in accordance with Annex C of this instrument.

**Citation**

- G. This instrument may be cited as the Mortgage Firms and Insurance Intermediaries (Application Fees) Instrument 2003.

By order of the Board  
18 September 2003

## Annex A

### Amendments to the Authorisation manual

In this annex underlining indicates new text and striking through indicates deleted text. Where an entire new section is inserted, the place it goes is indicated and the text is not underlined.

4.1.5AG *AUTH* 4 Annex 2R contains details of the application fees payable by applicants seeking to obtain *permission* to carry out any of the activities included in the A.2 (mortgage lenders and administrators), A.18 (mortgage advisers and arrangers) and A.19 (general insurance intermediaries) activity groups, for the period before these activities begin to be subject to regulation.

4.1.7G Except as set out in *AUTH* 4.1.7AG, Applications (and exercises of *Treaty rights*) are categorised by the *FSA* for the purpose of fee raising as complex, moderately complex and straightforward as identified in *AUTH* 4 Ann1R. This differentiation is based on the *permitted activities* sought and does not reflect the *FSA*'s risk assessment of the applicant (or *Treaty firm*).

4.1.7AG For the period before the activities referred to in *AUTH* 4.1.5AG are subject to regulation, applications for the A.2 (mortgage lenders and administrators), A.18 (mortgage advisers and arrangers) and A.19 (general insurance intermediaries) activity groups are categorised by the *FSA* for the purpose of fee raising using a measure of the amount of business being undertaken by the person, as detailed in *AUTH* 4 Ann 2R.

...

4.2.1R A person to whom this chapter applies must pay to the *FSA* an authorisation fee for each application made (or exercise of a *Treaty right*), as set out in *AUTH* 4 Annex 1R and *AUTH* 4 Annex 2R.

4.2.2R In respect of a particular application (or exercise) the authorisation fee referred to in *AUTH* 4.2.1R is the highest of the tariffs set out in part 1 of *AUTH* 4 Annex 1R and part 2 of *AUTH* 4 Annex 2R which apply to that application (or exercise).

...

After *AUTH* 4 Annex 1R, insert the following new Annex:

#### Annex 2R

Authorisation fees payable in relation to the A.2 and A.18 activity groups up to and including 30 October 2004 and the A.19 activity group up to and including 13 January 2005

Note: This annex specifies the application fees for applicants seeking to apply for *Part IV permission*, or to vary their existing *Part IV permission*, in order to undertake any of the activities specified in the A.2, A.18 and A.19 activity groups (see Part 7 of *SUP* 20 Ann 1R for details of the activities).

For the *permitted activities* included in the A.2 and A.18 activity groups, regulation commences on 31 October 2004. Regulation commences on 14 January 2005 for the *permitted activities* included in the A.19 activity group.

The fee *rules* set out in this annex will apply from the beginning of the application period until regulation of these *permitted activities* commences. At that time, these *rules* will cease to have effect and application fees for these types of *permitted activities* will be dealt with alongside the other *authorisation* fees as part of *AUTH 4* Annex 1R.

1 Table Part 1 - Application periods

- 1 For the A.2 and A.18 activity groups, these rates apply up to and including 30 October 2004.
- 2 For the A.19 activity group, these rates apply up to and including 13 January 2005.

2 Table Part 2 - Authorisation fees payable

Activity group	Amount payable					
	Fee bands		Fee - early applications	Fee - other applications	Discount - electronic applications	Discount - non-electronic applications paying by direct debit
Band no.	Band					
A.2 Mortgage lenders and administrators		<u>Gross advances (£m)</u>	Fee (£)	Fee (£)	Discount (£)	Discount (£)
	1	0-10	600	1,200	100	50
	2	>10-100	8,000	10,000	250	50
	3	>100-1,000	13,000	15,000	250	50
	4	>1,000	23,000	25,000	500	50
A.18 Mortgage advisers and arrangers; and		<u>Annual income (£m)</u>	Fee (£)	Fee (£)	Discount (£)	Discount (£)
	5	0 - 1	600	1,200	100	50
A.19 General insurance intermediaries	6	>1-3	4,250	5,750	250	50
	7	>3-25	9,000	11,000	250	50
	8	>25	23,000	25,000	500	50

Notes

- (1) An early application is an application lodged:
  - (a) for A.2 or A.18 applications, before 1 April 2004; and
  - (b) for A.19 applications, before 1 June 2004.



- (2) For the purposes of this table:
- (a) An electronic application is one submitted via the electronic facility provided by the *FSA* for these purposes.
  - (b) Gross advances means the value of all new mortgage advances made (not the total mortgage balances outstanding) including loans for house purchase, remortgages, further advances and top-up loans, in the 12 *months* to 31 December 2003; PLUS  
the value of all new mortgages administered (not the total mortgage balances outstanding) including loans for house purchase, remortgages, further advances and top-up loans, in the 12 *months* to 31 December 2003, multiplied by 0.5.  
Note: For this purpose, a mortgage is a contract for a loan secured by a first charge over residential property in the *United Kingdom*.
  - (c) Annual income means the net amount retained by the *firm* of all brokerages, fees, commissions and other related income (e.g. administration charges, overrides, profit shares) due to the *firm* in respect of or in relation to:
    - (i) activities which would be *mortgage mediation activity* if they had been carried out after 30 October 2004; PLUS
    - (ii) activities which would be *insurance mediation activity* (in relation to *general insurance contracts* or *pure protection contracts*) if they had been carried out after 13 January 2005;

earned in its latest financial year ending on or before 31 December 2003.

The *firm* must include in its income calculation, on the same basis as above, earnings from those who will become its *appointed representatives* immediately after *authorisation*.

3 Table Part 3 - Activity Groupings

3 The activity group definitions are set out in *SUP 20 Annex 1R*.

## Annex B

### Amendments to the Supervision manual

In this annex underlining indicates new text and striking through indicates deleted text:

- 6.3.22R If a *firm* applies for a variation of its *Part IV permission*, it must pay the fee specified in Part 3 of *AUTH 4 Annex 1R* in either of the following cases:
- (1) if the variation is granted, the business of the *firm* will fall within one or more ~~fee blocks~~activity groups specified in ~~Part 5 of *AUTH 4 Annex 1R*~~Part 7 of *SUP 20 Annex 1R* not applicable before the grant of the variation; or
  - (2) any other circumstances specified in Part 3 of *AUTH 4 Annex 1R* apply.

...

20 Annex 1R

...

5 Table

Activity group (defined in Part 7)	Valuation date for tariff bases (defined in Part 7)	Fee payable (tariff bases defined in Part 7)
A.1 Deposit acceptors	...	...
<u>A.2 Mortgage lenders and administrators</u>	<u>[Not applicable for the 2003/04 period]</u>	<u>[Not applicable for the 2003/04 period]</u>
...		
<u>A.18 Mortgage advisers and arrangers</u>	<u>[Not applicable for the 2003/04 period]</u>	<u>[Not applicable for the 2003/04 period]</u>
<u>A.19 General insurance intermediaries</u>	<u>[Not applicable for the 2003/04 period]</u>	<u>[Not applicable for the 2003/04 period]</u>
B <i>Firms</i> that have been prescribed as an operator of a prescribed market under the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001, SI 2001/996.	...	...

#### Part 7 - Activity groups and tariff bases

15 Table

Activity group	Fee-payer falls in the activity group if	Tariff-base
A.1 Deposit acceptors	...	...
<u>A.2 Mortgage lenders and administrators</u>	<p><u>its permission includes one or more of the following:</u></p> <ul style="list-style-type: none"> <li>• <u>entering into a regulated mortgage contract;</u> <u>or</u></li> <li>• <u>administering a regulated mortgage contract;</u> <u>or</u></li> <li>• <u>agreeing to carry on a regulated activity which is within either of the above.</u></li> </ul>	<u>[Not applicable for the 2003/04 period]</u>
...		
<u>A.18 Mortgage advisers and arrangers</u>	<p><u>its permission includes one or more of the following:</u></p> <ul style="list-style-type: none"> <li>• <u>arranging (bringing about) regulated mortgage contracts;</u> or</li> <li>• <u>making arrangements with a view to regulated mortgage contracts;</u> or</li> <li>• <u>advising on regulated mortgage contracts;</u> or</li> <li>• <u>agreeing to carry on a regulated activity which is within either of the above.</u></li> </ul>	<u>[Not applicable for the 2003/04 period]</u>
<u>A.19 General insurance intermediaries</u>	<p><u>its permission includes one or more of the following in relation to a general insurance contract or a pure protection contract:</u></p> <ul style="list-style-type: none"> <li>• <u>dealing in investments as agent;</u> or</li> <li>• <u>arranging (bringing about) deals in investments;</u> or</li> <li>• <u>making arrangements with a view to transactions in investments;</u> or</li> <li>• <u>assisting in the administration and performance of a contract of insurance;</u> or</li> <li>• <u>advising on investments;</u> or</li> <li>• <u>agreeing to carry on a regulated activity which is within any of the above.</u></li> </ul>	<u>[Not applicable for the 2003/04 period]</u>
B	...	...

## Annex C

### Amendments to the Glossary

Insert the following new definitions in the appropriate alphabetical position:

*insurance mediation activity* any of the following *regulated activities* carried on in relation to a *contract of insurance* or *rights to or interests in a life policy*:

- (a) *dealing in investments as agent* (article 21);
- (b) *arranging (bringing about) deals in investments* (article 25(1));
- (c) *making arrangements with a view to transactions in investments* (article 25(2));
- (d) *assisting in the administration and performance of a contract of insurance* (article 39A);
- (e) *advising on investments* (article 53);
- (f) *agreeing to carry on a regulated activity* in (a) to (e) (article 64).

*mortgage mediation activity* (as defined in article 26 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (SI 2003/1475)) any of the following *regulated activities*:

- (a) *arranging (bringing about) regulated mortgage contracts* (article 25A(1));
- (b) *making arrangements with a view to regulated mortgage contracts* (article 25A(2));
- (c) *advising on regulated mortgage contracts* (article 53A);
- (d) *agreeing to carry on a regulated activity* in (a) to (c) (article 64).

**LLOYD'S SOURCEBOOK (SOLVENCY I DIRECTIVE)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 138 (General rule-making power);
  - (2) section 150(2) (Actions for damages);
  - (3) section 156 (General supplementary powers); and
  - (4) section 157 (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 January 2004 (to apply to the Society of Lloyd's for and from the first day of its financial year beginning on 1 January 2004).

**Amendments to the Lloyd's sourcebook**

- D. The Lloyd's sourcebook is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Lloyd's Sourcebook (Solvency I Directive) Instrument 2003.

By order of the Board  
18 September 2003

## Annex

### Amendments to the Lloyd's sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section of text is inserted, the place that it goes is indicated and it is not underlined.

#### Transitional Provisions

After transitional provision 6, insert the following new transitional provisions:

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
7	<i>LLD 11.4.8R</i>	R	The <i>Society</i> must take each <i>member's</i> share of the <i>general insurance business</i> premiums to be his share calculated for <i>general insurance business</i> premiums receivable.	1.1.2004 to 31.12.2005	1.1.2004
8	<i>LLD 11.5.1R</i>	R	In calculating the <i>Society margin</i> , the <i>Society</i> must calculate the first method (premium basis) as set out in <i>IPRU(INS) Appendix 2.1</i> using only <i>gross premiums receivable</i> and not <i>gross premiums earned</i> .	1.1.2004 to 31.12.2005	1.1.2004
9	<i>LLD 15.2.1R</i>	R	The <i>Society</i> may prepare the <i>Lloyd's Return</i> in respect of the <i>financial year</i> ending on 31 December 2003:  (1) without taking account of the changes to <i>LLD</i> effected by the Lloyd's Sourcebook (Solvency I Directive) Instrument 2003 or the changes to <i>IPRU(INS)</i> effected by the Interim Prudential Sourcebook for Insurers (Solvency I Directive) Instrument 2003, provided that	1.1.2004 to 31.12.2005	1.1.2004

			<p>(2) the <i>Society</i> sends to the <i>FSA</i>, within six months of the end of that <i>financial year</i>, Form 9 completed in respect of that year and completed in accordance with <i>LLD</i> and <i>IPRU(INS)</i> as amended by those Instruments.</p> <p>The Form 9 sent to the <i>FSA</i> under (2) need not be audited.</p>		
--	--	--	---	--	--

...

11.1.7 G The rules in this chapter implement the Solvency 1 Directives (2002/12/EC and 2002/13/EC) in respect of Lloyd's.

## 11.2 SOLVENCY REQUIREMENT

11.2.-2 R If *IPRU(INS)* 2.4(6) operates to increase the *Society margin*, the *Society* may attribute all or part of that increase to a *member* by increasing that *member's required amount*, as provided for in *LLD* 11.2.6R.

11.2.-1 R If the *Society* relies on *LLD* 11.2.-2R to attribute any part of the increase in the *Society margin* to a *member*, it must establish and use a reasonable and transparent methodology for making that attribution.

11.2.1 R The *Society* must maintain available net central assets which are adequate to cover the aggregate of:

- (1) for each *member*, the amount by which his *general insurance business assets* are less than the *required amount* calculated under *LLD* 11.2.6R;
- (2) for each *member*, the amount by which his *long-term insurance business assets* are less than the *required amount* calculated under *LLD* 11.2.7R;
- (3) ~~the excess (if any) of the amount calculated under *LLD* 11.5.1R (the *Society margin*) over the sum for all *members* of the *members' margins* for *general insurance business*; and~~
- (3) the amount by which the *Society margin*, less any increase resulting from the operation of *IPRU(INS)* 2.4(6), exceeds the sum for all *members* of the *members' margins* for *general insurance business*;
- (4) the excess (if any) of ~~the sterling equivalent of 800,000~~ 3,000,000 Euros over the sum for all *members* of the *members' margins* for *long-term insurance business*; and
- (5) the amount of any increase in the *Society margin* resulting from the operation of *IPRU(INS)* 2.4(6) that is not attributed to a *member* or *members* under *LLD* 11.2.-2R.

...

- 11.2.3 G *LLD 11.2.1R* is the central financial requirement placed on the *Society*. The *Society* will need to perform an assessment of the financial position of each *member*, to the extent necessary to confirm continuing compliance with *LLD 11.2.1R*. It will need to have sufficient funds centrally to cover the total of:
- (1) any shortfall in the assets of *members* when, individually, their assets are less than the sum of their liabilities and a *member's margin*, calculated according to formulae set out in *LLD 11.3.1R* and *LLD 11.3.4R*; ~~and~~
  - (2) any adjustment required of the *Society* when the total of *members' margins* is less than the result would have been had the *Society* been treated as a single *insurer* and applied the relevant solvency test to itself; and
  - (3) any amount of the increase in the *Society margin* resulting from the operation of *IPRU(INS) 2.4(6)* that the *Society* does not or cannot attribute to a *member* or *members*, by increasing the *required amounts* of those *members* under *LLD 11.2.-2R*.

...

- 11.2.6 R For each *member*, the *required amount* for *general insurance business* is the aggregate of:
- (3) his *general insurance business liabilities*; ~~and~~
  - (4) the *member's margin* for *general insurance business*, calculated under *LLD 11.3.1R*; and
  - (3) any amount attributed to that *member* under *LLD 11.2.-2R*.
- 11.2.11 R The *Society* must inform the *FSA* promptly if its *net central assets* are, or are likely to be, inadequate to cover the aggregate of:
- (5) for each *member*, the amount by which his *general insurance business assets* are less than the *lower required amount* calculated under *LLD 11.2.13R*;
  - (6) for each *member*, the amount by which his *long term insurance business assets* are less than the *lower required amount* calculated under *LLD 11.2.14R*;
  - (3) ~~the excess (if any) of the amount determined under *LLD 11.5.2R* (the *Society guarantee fund*) over one-third of the sum for all *members* of the *member's margins* for *general insurance business*; and~~
  - (3) the amount by which the *Society guarantee fund*, less any increase resulting from the operation of *IPRU(INS) 2.4(6)*, exceeds one-third of the sum for all *members* of the *members' margins* for *general insurance business*;



- (4) the excess (if any) of 3,000,000 Euros over one-third of the sum for all *members of the member's margins for long term insurance business; and*
- (5) one-third of the amount of any increase in the *Society margin* resulting from the operation of *IPRU(INS) 2.4(6)* that is not attributed to a *member* under *LLD 11.2.-2R*.

...

- 11.2.13 R For each *member*, the *lower required amount* for *general insurance business* is the aggregate of:
- (7) his *general insurance business liabilities*; ~~and~~
  - (8) one-third of the *member's margin* for *general insurance business*, calculated under *LLD 11.3.1R*; and
  - (3) one-third of any amount attributed to that *member* under *LLD 11.2.-2R*.
- 11.2.14 R For each *member*, the *lower required amount* for *long term insurance business* is the aggregate of:
- (1) his *long term insurance business liabilities*; and
  - (2) one-third of the *member's margin* for *long term insurance business*, calculated under *LLD 11.3.4R*.
- 11.2.15 R (1) Subject to (2) and (3), the base amount, in Euro, specified in *LLD 11.2.1R(4)* and *LLD 11.2.11R(4)* will increase each year, starting on the first review date of 20 September 2003 (and annually after that), by the percentage change in the European index of consumer prices (comprising all EU member states as published by Eurostat) from 20 March 2002 to the relevant review date, rounded up to a multiple of 100,000 Euro.
- (2) In any year, if the percentage change since the last increase is less than 5%, then there will be no increase.
  - (3) The increase will take effect 30 days after the EU Commission has informed the European Parliament and Council of its review and the relevant percentage change.
- 11.2.16 R Where the nature or quality of reinsurance relied on to reduce the *member's margin* for *general insurance business* for any *member* or *members* changes significantly during the *financial year*, the *Society* must notify the *FSA* forthwith of the change.
- 11.2.17 R To the extent that an asset is valued at *market value*, and there has been a significant decrease in the *market value* since the end of the prior *financial year*, the *Society* must notify the *FSA* forthwith of the change.

...

- 11.3.2 G The *member's margin* applying throughout a *financial year* depends on premiums receivable during the previous *financial year* or *claims* incurred during the three previous *financial years*, multiplied in each case by a ratio derived primarily from *claims* incurred in the previous three *financial years*.

...

#### PREMIUMS BASIS

- 11.4.8 R Subject to *LLD* 11.4.2R, *LLD* 11.4.6R and *LLD* 11.4.9R, for each *member* the premiums basis referred to in *LLD* 11.3.1R is his share of the *general insurance business* premiums (or one-third of his share for *actuarial health insurance*) in the previous *financial year* multiplied by 16% of the factor determined under *LLD* 11.4.11R. For each *member*, his share of the *general insurance business* premiums is either his share calculated for *general insurance business* premiums earned, or that calculated for *general insurance business* premiums receivable, whichever is the higher.

- ~~11.4.9 G If the *Society* cannot determine premiums gross of commission without disproportionate expense, it may calculate the premiums net of commission and then gross up by the ratio of gross to net premiums for the *members* taken together.~~

- 11.4.9 R For the purpose of calculating each *member's* share of *general insurance business* premiums under *LLD* 11.4.8R, premiums in respect of classes 11, 12 and 13 of *general insurance business* (see Annex 11.2 of *IPRU(INS)*) must be increased by 50% for both *general insurance business* premiums earned and *general insurance business* premiums receivable. Statistical methods may be used to allocate the premiums in respect of these classes.

...

#### CLAIMS BASIS

- 11.4.13 R Subject to *LLD* 11.4.13AR for each *member*, the claims basis referred to in *LLD* 11.3.1R is his share, determined under *LLD* 11.4.2R, of the *general insurance business claims* incurred (or one-third of his share in the case of *actuarial health insurance*) in the three previous *financial years* divided by three and multiplied by 23% of the factor determined under *LLD* 11.4.17R.

- 11.4.13 R For the purposes of *LLD* 11.4.13R *claims*, provisions and recoveries in respect of classes 11, 12 and 13 of *general insurance business* (see Annex 11.2 of *IPRU(INS)*) must be increased by 50%. Statistical methods may be used to allocate the *claims*, provisions and recoveries in respect of these classes.

A

...

#### FACTOR TO NET DOWN FOR REINSURANCE

11.4.19 R For the purposes of *LLD* 11.4.20R and subject to *LLD* 11.4.2R, the ratio for each *member* is the ratio for the three previous *financial years* of his share of net (of reinsurance) *claims* incurred to his share of gross *claims* incurred divided by the factor determined under *LLD* 11.4.21R.

...

## LLD 15 Annex 1R: Forms

### Form 9 Guidance Notes

...

- 7 The entry at line 41 must be the aggregate of the *members' margins* for *long-term insurance business* or, if greater, the sterling equivalent of ~~800,000~~ 3,000,000 Euros (subject to increase in accordance with LLD 11.2.15R) (using the conversion rate notified by the *FSA* from time to time for this purpose).
- 8 The entry at line 45 must be the aggregate of the excess for each member of his *long-term insurance business assets* over his *required amount* for *long-term insurance business*.
- 9 The entry at line 46 must be the aggregate of the shortfall for each member of his *long-term insurance business assets* over his *required amount* for *long-term insurance business*, plus any excess of the sterling equivalent of ~~800,000~~ 3,000,000 Euros (subject to increase in accordance with LLD 11.2.15R) (using the conversion rate notified by the *FSA* from time to time for this purpose) over the aggregate of the *members' margins* for *long-term insurance business*.

**LISTING RULES (MODEL CODE) INSTRUMENT 2003****Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 74 (The official list);
  - (2) section 75 (Applications for listing);
  - (3) section 79 (Listing particulars and other documents);
  - (4) section 80 (General duty of disclosure in listing particulars);
  - (5) section 84 (Prospectuses); and
  - (6) section 96 (Obligations of issuers of listed securities).
- B. The rule-making powers listed above are specified for the purpose of section 153 (2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 December 2003.

**Amendments to the Listing Rules**

- D. The Listing Rules are amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Listing Rules (Model Code) Instrument 2003.

By order of the Board  
18 September 2003

## Annex

### Amendments to the Listing Rules

In this Annex, underlining indicates new text.

#### APPENDIX TO CHAPTER 16

#### THE MODEL CODE

##### Definitions

In this code the following definitions, in addition to those contained in the listing rules, apply unless the context otherwise requires:

...

- (b) “dealing” includes any acquisition or disposal of, or agreement to acquire or dispose of, any securities of the company, entering into of any contract for differences or any other contract the purpose of which is to secure a profit or avoid a loss by reference to fluctuations in price of any securities of the company and the grant, acceptance, acquisition, disposal, exercise or discharge of any option (whether for the call, or put, or both) or other right or obligation, present or future, conditional or unconditional, to acquire or dispose of securities, or any interest in securities, of the company and “deal” shall be construed accordingly;

...

**WAIVER APPLICATION FORM (AMENDMENT) DIRECTION  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers in the Financial Services and Markets Act 2000:
- (1) section 148(3) (Modification or waiver of rules);
  - (2) section 250(4) (Modification or waiver of rules);
  - (3) section 250(5) (Modification or waiver of rules); and
  - (4) section 294(2) (Modification or waiver of rules).

**Commencement**

- B. This instrument comes into force on 13 October 2003.

**Amendments to the Supervision Manual**

- C. The Supervision Manual is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Waiver Application Form (Amendment) Direction Instrument 2003.

Signed by Carol Sergeant  
Managing Director  
13 October 2003

## Annex

### Amendments to the Supervision Manual

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### SUP 8 Ann 2D (see SUP 8.3.3D)

#### **Application form for a ~~waiver or modification~~**

Before completing this ~~application~~ form, you may find it helpful to discuss ~~the~~ your application with your usual supervisory contact, or your usual contact in Corporate Authorisation, at the *FSA*. However, you ~~should~~ must still ensure that all relevant information is included in this ~~application~~ form. If it is not, the determination of your application will be delayed while the FSA seeks answers to further questions from you. Please read the notes in the next section as you complete the form as they explain or give assistance on many of the questions.

<b><u>WAIVER APPLICATION NUMBER</u></b>							
Firm details							
<b>1</b>	Name of <i>firm</i> <sup>1</sup>						
<b>2</b>	FSA firm reference no.						
<b>3</b>	Contact point at <i>firm</i>	Name:					
		Position:					
		Address:					
		Telephone number:					
		Fax number:					
		E-mail address:					
		Web address:					
Details of <del>waiver or modification</del> sought							
<b>4</b>	Are you applying for a variation of an existing <del>waiver</del> ? If so, give the Direction reference number. <sup>2</sup> <u>What is the name of the <i>approved person</i> responsible for this application?</u>						
<b>5</b>	Handbook reference number of the <del>rule(s)</del> to which this application relates. <u>In brief, what is the nature of your business?</u>						
<b>6</b>	Are you applying for the <del>rule</del> to be waived completely, or for a modification of the <del>rule</del> ? If a modification, provide a draft of the modification sought <u>What type of <i>client</i> would be affected if your application was granted?</u>	<input type="checkbox"/> <u>private customer</u> <input type="checkbox"/> <u>intermediate customer</u> <input type="checkbox"/> <u>market counterparty</u>					
<b>7</b>	Detail any special requirements <sup>3</sup>						



<b>Details of research undertaken</b>		
<b>Details of waiver sought</b>		
<b>7</b>	<i>Rule(s)</i> to which this application relates.	
<b>8</b>	<p><del>Confirm that you have checked the <i>waivers</i> published by the <i>FSA</i> for any precedent. If your application is based on a precedent, give the Direction reference number<sup>4</sup></del></p> <p><u>Are you applying for the <i>rule</i> to be <i>waived</i> completely, or for a modification of the <i>rule</i>? If a modification, please provide a draft of the modification sought.</u></p>	<p>I confirm there is/is not a published precedent</p> <p>Published precedent Direction reference number (if applicable):</p>
<b>9</b>	<p><del>Is your application under section 148, 250 or 294 of the <i>Act</i>, or under regulation 7 of the <i>OEIC Regulations</i>?<sup>5</sup></del></p> <p><u>Are you applying for a variation of an existing <i>waiver</i>? If so, give the direction reference number.</u></p>	
<b>10</b>	<p>Confirm that the <i>rule(s)</i> can be waived (not relevant for <i>IPRU</i>)<sup>6</sup></p> <p><u>Detail any other relevant considerations.</u></p>	Confirmed/not relevant
<b>Details of research undertaken</b>		
<b>11</b>	<p><del>Explain why, in your view, the waiver or modification requested would not be incompatible with European directives<sup>7</sup></del></p> <p><u>Have you checked the <i>waivers</i> published by the <i>FSA</i> for a precedent?</u></p>	<p><input type="checkbox"/> Yes – see Q12</p> <p><input type="checkbox"/> No – please state why you did not think it relevant in this <u>instance</u></p>
<b>12</b>	<p><del>Give a full and clear explanation of why you want the waiver or modification</del></p> <p><u>If your application is based on a precedent, please:</u></p> <p><u>(a) give the direction reference number; and</u></p>	

	<p><u>(b) explain why you think this precedent is relevant to your application:</u></p> <p><u>(c) please explain or mark up the differences where relevant.</u></p>	
13	<p><del>Give a full and clear explanation of why you consider that the statutory tests are satisfied<sup>†</sup> What is the basis of your application?</del></p>	<p>Your compliance with the <i>rules</i>, or the <i>rules</i> as unmodified, would:</p> <ul style="list-style-type: none"> <li>• <del>be unduly burdensome because:</del></li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• not achieve the purpose for which the <i>rules</i> were made because:</li> </ul> <p>AND</p> <p>The <i>waiver</i> would not result in undue risk to <i>persons</i> whose interests the <i>rules</i> are intended to protect because:</p> <p>FSMA 148 <input type="checkbox"/> 250 <input type="checkbox"/> 294 <input type="checkbox"/></p> <p><u>OEIC Regulations – Regulation 7</u> <input type="checkbox"/></p>
<b>Publication</b>		
14	<p>Are you content for the <i>waiver</i> to be published? If no, state your reasons.<sup>9</sup></p> <p><u>Please confirm that you have checked that the <i>rule(s)</i> can be waived.</u></p>	<p><u>Confirmed / not relevant</u></p>
15	<p><u>Please state if you have been able to establish whether the <i>rule</i> to be waived implements a European directive requirement.</u></p> <p><u>Where relevant, please set out any matters that you believe would be relevant to assessing whether the <i>waiver</i> would be compatible with European directives requirements.</u></p>	<p><u>Confirmed/Unable to confirm</u></p>
16	<p><u>If you have sought professional advice on your application please confirm that your adviser regards the basis of the application as justifiable having regard to the statutory tests referred to in Q13.</u></p>	<p><input type="checkbox"/> <u>Confirmed</u></p> <p><input type="checkbox"/> <u>No professional advice sought</u></p>

**Reasons why the *waiver* should be given**

<p><b>17</b></p>	<p><u>Please give a full and clear explanation of why you are applying for the <i>waiver</i>.</u></p>	
<p><b>18</b></p>	<p><u>Please give a full and clear explanation of why you consider that the statutory tests are satisfied.</u></p>	<p><u>Your compliance with the <i>rules</i>, or with the <i>rules</i> as unmodified, would:</u></p> <ul style="list-style-type: none"><li>• <u>be unduly burdensome because:</u></li></ul> <p><b><u>OR</u></b></p> <ul style="list-style-type: none"><li>• <u>not achieve the purpose for which the <i>rules</i> were made because:</u></li></ul>

		<p><u>AND</u></p> <p><u>The waiver would not result in undue risk to persons whose interests the rules are intended to protect because:</u></p>
<b><u>Publication</u></b>		
<p><b><u>19</u></b></p>	<p>Are you content for the <i>waiver</i> to be published? If no, state your reasons.</p>	

**Declaration and signature<sup>10</sup>**

**Warning:**

**Knowingly or recklessly giving the *FSA* information that is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the ~~Financial Services and Markets Act 2000~~ *Act*). *SUP 15.6.1R* and *SUP 15.6.4R* require an *authorised person* to take reasonable steps to ensure the accuracy and completeness of information given to the *FSA* and to notify the *FSA* immediately if materially inaccurate information has been provided. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the *FSA*. It should not be assumed that information is known to the *FSA* merely because it is in the public domain or has previously been disclosed to another regulatory body. If there is any doubt about the relevance of information, it should be included.**

## Declaration and signature

I confirm that the information in this form is accurate and complete to the best of my knowledge and belief.

Signature of authorised signatory:

Date:

Name:

Position held:

## **Declaration and signature if a third party is named**

If the waiver ~~or modification~~ will name a third party (for example, a *waiver* disapplying for a named individual the *rule* in *TC* requiring an examination to be passed), the third party ~~should~~ **must** also sign below.

I confirm that the information in this form ~~which~~ that concerns my circumstances is accurate and complete to the best of my knowledge and belief. I also confirm that I am content for the waiver ~~or modification~~ to be published, unless otherwise indicated in box ~~44~~ 19 of this form.

Signature of named third party:

Date:

Name:

## **Notes on completion**

### **Notes to questions:**

~~1~~ Please note that defined terms used in the text are shown in italics. Definitions can be found in the Handbook Glossary [http://www.fsa.gov.uk/handbook/hbk\\_glossary.pdf](http://www.fsa.gov.uk/handbook/hbk_glossary.pdf)

Question Number	Notes to Question
1 / 2	If the applicant is not a <i>firm</i> , for example an applicant for a <i>Part IV permission</i> , give its name and indicate that it is not an <i>authorised person</i> . <u>In those cases, there is no need to give the FSA firm reference number in the next question Q2.</u> If the application is submitted by, <u>or on behalf of,</u> more than one <i>firm</i> (for example, by more than one <i>firm</i> in a <i>group</i> ), the names of each <i>firm</i> <del>should</del> <b>must</b> be given. <del>All and each</del> <u>All and each</u> FSA firm reference number should be given in <u>response to the next question Q2</u> and if the form is signed, a single individual can sign the form on behalf of each <i>firm</i> if he has authority to do so.

~~2~~ This field needs completing only if you are requesting a variation of a waiver or modification give by the *FSA*. In those cases, you should take the Direction reference number from the Direction sent to you by the *FSA*.

4	<u>The FSA may contact the approved person about an application.</u> <u>The approved person may have responsibility for an application for more than one firm provided that he has authority to do so.</u>
8	<u>Your draft modification must show how you propose that the text of the rule(s) should be modified. This must be demonstrated by underlining inserted text and scoring through deleted text.</u>
9	<u>Obtain the direction reference number from the direction sent to you by the FSA.</u>
<del>3</del> -10	<del>For example, do you need an urgent decision, or is there a specific period for which the waiver or modification is required?</del> if your application is time-critical or if the <i>waiver</i> is required for a specific period.
<del>4</del> -11	You can inspect published <i>waivers</i> at <a href="http://www.fsa.gov.uk/waivers/published_waivers.html">http://www.fsa.gov.uk/waivers/published_waivers.html</a> .
<del>5</del> -13	Section 148 of the <i>Act</i> is the power used to give most <i>waivers</i> . Section 250 of the <i>Act</i> and regulation 7 of the <i>OEIC Regulations</i> are relevant only for certain <i>rules</i> in the Collective

	Investment Schemes sourcebook (see <i>SUP</i> 8.2.3G). Section 294 of the <i>Act</i> is relevant only for certain <i>rules</i> in the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (see <i>REC</i> 3.3).
<del>6-14</del>	Schedule 6 ( <u>Rules that can be waived</u> ) to each sourcebook and manual of the <i>Handbook</i> ( <del>other than IPRU</del> ) sets out those <i>rules</i> that the <i>FSA</i> has the power to <i>waive</i> under the <i>Act</i> . It does not, however, deal with compatibility with European directives (see <u>notes to Q15 next question</u> ). The exception to this is for the <i>IPRU</i> sourcebooks which have no Schedule 6. If you are applying for a <i>waiver</i> of an <i>IPRU rule</i> answer ‘not relevant’ to this question.
<del>715</del>	The <i>FSA</i> cannot give a <i>waiver</i> that would be incompatible with the <i>United Kingdom’s</i> responsibilities under European directives. In many cases, the ‘Purpose’ section of a chapter or section of the <i>Handbook</i> will identify whether the text implements a directive requirement. The <i>FSA</i> only expects a <i>firm</i> to take reasonable steps in answering this question; what is reasonable will depend on the resources of the <i>firm</i> . <del>Suitable answers would explain:</del> <ul style="list-style-type: none"> <li><del>• the firm is unable to answer this question (with reasons);</del></li> <li><del>• the firm is outside the scope of the directive which the rule implements (with reasons);</del></li> <li><del>• the rule concerned does not implement a directive requirement;</del></li> <li><del>• the modification sought means that the rule would still implement (identified) minimum directive requirements;</del></li> </ul> <p><del>the (identified) directive requirement incorporates an ability for the FSA, as competent authority, to waive the rule. If a firm is unable to confirm which particular European directive requirement the rule to be waived implements, it should reply ‘unable to confirm’. Where a firm is able to identify a particular European directive requirement implemented by the rule to be waived but considers that the proposed waiver would in any event not breach that requirement it is asked to provide details.</del></p>
16	<u>Firms should consider whether they should seek advice before submitting an application for a waiver. That advice may be in-house. Whether advice is appropriate will depend on the difficulty or novelty (for example if no precedent exists) of the application and the firm’s size and resources.</u>
17	The <i>FSA</i> expects <i>firms</i> to provide (where applicable): <ul style="list-style-type: none"> <li>• <u>relevant background information about the firm and the context in which it is applying for a waiver;</u></li> <li>• <u>details of any relevant correspondence with former or other regulators;</u></li> <li>• <u>details of any relevant correspondence with the FSA;</u></li> <li>• <u>details of any changes in a:</u> <ul style="list-style-type: none"> <li>• <u>rule;</u></li> <li>• <u>circumstance; or</u></li> <li>• <u>market condition</u></li> </ul> <u>that have affected the firm or prompted the application for a waiver;</u> </li> <li>• <u>Details of the anticipated benefits that would or may accrue if the waiver was granted (and if not arguing the ‘unduly burdensome’ argument in Q18, what the estimated impact on the firm and its customers would be if the waiver was not granted);</u></li> <li>• <u>An explanation as to why the waiver is required.</u></li> </ul> <p><u>This list is not exhaustive. Firms should therefore include any other information that they regard as relevant.</u></p> <p><u>Firms should make themselves aware of the information required of them by Q18 and may cross refer to the answers set out there where relevant to avoid duplication.</u></p>
<del>8-18</del>	The <i>FSA</i> cannot give a <i>waiver</i> unless the statutory tests are satisfied. The tests are set out in section 148(4) of the <i>Act</i> , and reproduced in <i>SUP</i> 8.3.1G. The tests under sections 250 and 294 of the <i>Act</i> , and regulation 7 of the <i>OEIC Regulations</i> , are similar. <i>Firms</i> need to be aware that both matters (‘unduly burdensome’ or ‘not achieve the purpose’; and ‘undue risk’) noted require detailed explanation and substantive argument before the application can be processed. Unless there are satisfactory responses to these matters, the <i>waiver</i> application may be rejected, or we may require further information. <u>Firms are reminded to set out only the more pertinent arguments in support of the unduly burdensome or purpose tests.</u>
<del>9 19</del>	See <i>SUP</i> 8.6.7G (Firm’s objection to publication).

~~10 A signature on behalf of the *firm* is not mandatory. In cases where a third party is named, we suggest that *firms* submit the form by e-mail and then forward a hard copy signed by the third party.~~

### **Declarations and signature**

A signature on behalf of the *firm* is not mandatory if the application is sent by e-mail unless a third party is named (see below). If the form is sent in hard copy, it must be signed.

In cases where a third party is named, the third party's signature is mandatory. The *FSA* suggests that *firms* submit the form by e-mail and then forward a hard copy signed by the third party. A single individual can sign the form on behalf of each *firm* (in the case of applications for more than one *firm* in a *group*) if he has authority to do so.

### **Instructions for submission**

When completed, submit this application form in line with *SUP* 15.7.4R to *SUP* 15.7.9G6R. In particular, you may send applications by e-mail (which ~~we~~ the *FSA* prefers) or by post, addressed to your usual supervisory contact or your usual contact in Corporate Authorisation. The address for postal submission is:

(1) The Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS  
(If your usual supervisory contact or usual contact in Corporate Authorisation at the *FSA* is based in London)

(2) The Financial Services Authority  
Sutherland House  
108-114 Dundas Street  
Edinburgh EH3 5DQ

(If your usual supervisory contact at the *FSA* is based in Edinburgh)

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**INTERIM PRUDENTIAL SOURCEBOOK FOR INVESTMENT BUSINESSES  
(AMENDMENT NO 6) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers); and
  - (3) section 157 (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 December 2003.

**Amendments to the Interim Prudential Sourcebook for Investment Businesses**

- D. IPRU(INV) is amended in accordance with Annex A to this Instrument.

**Amendments to the Supervision Manual**

- E. The Supervision manual is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Interim Prudential Sourcebook for Investment Businesses (Amendment No 6) Instrument 2003.

By order of the Board  
15 October 2003



**Annex A**

**Amendments to IPRU(INV)**

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section of text is being inserted, the place where it goes is indicated and it is not underlined.

...

Table 5.1.1(1)(a) R

...

TABLE 5.1.1(1)(a) APPLICATION OF CHAPTER 5				
	<b>ISD firms</b>	<b>OPS firms</b>	<b>Non-OPS Life Offices and Non-OPS Local Authorities</b>	<b>Individuals admitted to membership collectively</b>
...				
<b>Consolidated supervision rules</b>				
5.7.1(1) to <del>5.7.1(4)</del> <u>5.7.5(2)</u>	<u>Yes, but only for CAD firms.</u>	No	No	<del>Yes</del> <u>No</u>
...				
	<b>Individuals whose sole investment business is giving investment advice to institutional or corporate investors</b>		<b>Firms subject to "lead regulator arrangements"</b>	<b>All other Firms</b>
...				
<b>Consolidated supervision rules</b>				
5.7.1(1) to <del>5.7.1(4)</del> <u>5.7.5(2)</u>	No	No		<u>Yes, but only for CAD firms.</u>
...				

...

## **5.7.1 5.7 CONSOLIDATED SUPERVISION**

### **5.7.1 APPLICATION OF CONSOLIDATION**

5.7.1(1) R ~~A firm will be subject to consolidated supervision by the FSA unless rule 5.7.1(3) or (3) applies.~~ Subject to rule 5.7.1(2), consolidated supervision and the rules in section 5.7 apply to a firm which is a member of a group if it is a CAD firm.

### **CASES WHERE CONSOLIDATED SUPERVISION BY THE FSA WILL NOT APPLY**

5.7.1(2) R A firm ~~will~~ is not be subject to *consolidated supervision* under this Chapter of IPRU(INV) by the FSA where any of the following conditions are fulfilled:

- (a) the *financial resources rules* in section 5.7 do not apply to the *firm* by virtue of Table 5.1.1(1)(a); ~~or~~
- (b) the *firm* is included in the supervision on a consolidated basis of the group of which it is a member by a *competent authority* other than the FSA; or
- (c) the *firm* is already included in the supervision on a consolidated basis of the group of which it is a member by the FSA under IPRU(BANK), IPRU(BSOC) or another chapter of IPRU(INV).

5.7.1(3) R ~~A firm will not be subject to consolidated supervision if:~~

- (a) ~~each member of the group which is an ISD firm or a European investment firm:~~
  - (i) ~~is subject either to a liquid capital requirement in accordance with rule 5.2.3(1), or to an equivalent capital regime;~~
  - (ii) ~~complies with its financial resources requirement and the large exposures requirements set out in rules 5.2.7(2) to (5), or with the equivalent rules of its regulator; and~~
  - (iii) ~~has systems to monitor and control the sources of capital and funding of all other financial institutions within the group;~~
- (b) ~~each member of the group which is regulated by the FSA notifies the FSA of any serious risks that could undermine the financial stability of the group, and follows any corrective action required by the FSA;~~
- (c) ~~the firm has applied for and obtained from the FSA a waiver from rule 5.7.1(1).~~

### **OBLIGATION TO PROVIDE INFORMATION**

5.7.1(4) R ~~A firm which is subject to rule 5.7.1(1) must provide such information as is required to enable the FSA to assess the risks to which the firm may be subject as a member of the group of which it is a member.~~

- 5.7.1(3) G (a) The rules in section 5.7 apply even if the *firm* is subject to the *rules* in IPRU(INS) (the insurance group rules), if the firm is part of an investment sub-group. Insurance groups are subject to the Insurance Groups Directive (98/78/EC). The directive does not allow a *waiver* of consolidation of a Capital Adequacy Directive group. So if there is an investment sub-group within an insurance group, the rules in this Chapter apply, regardless of the application of a group capital assessment to the wider group.
- (b) Where *firms* authorised in two or more Member States have as their *parent* the same *financial holding company*, supervision on a consolidated basis will be exercised by the *competent authority* of the *firms* authorised in the member state in which the *financial holding company* was set up. If no *firm* has been authorised in the Member State in which the *financial holding company* was set up, the *competent authorities* of the Member States concerned will seek to reach agreement as to who amongst them will exercise supervision on a consolidated basis. In the absence of such an agreement, supervision on a consolidated basis will be exercised by the *competent authority* that granted authorisation to the *firms* with the greatest balance-sheet total (measured on the basis of total assets). If that figure is the same for more than two authorised *firms*, supervision on a consolidated basis will be exercised by the *competent authority* which first gave the authorisation.
- (c) Where there is more than one regulated *firm* in the group, one consolidated return may be submitted on behalf of all the *firms* in the group in accordance with SUP 16.3.25G.

5.7.1(4) R A *firm* need not meet the requirements in rules 5.7.3(1) and 5.7.3(2) if:

- (a) there is no *credit institution* in the group;
- (b) no *firm* in the group *deals in investments as principal*, except where it is an *operator* of a *collective investment scheme* dealing solely as a result of its activity of operating a *collective investment scheme*, or where the *firm's* positions fulfil the *CAD Article 3 exempting criteria*;
- (c) each member of the group which is a *CAD firm*:
- (i) is subject either to a *liquid capital requirement* in accordance with rule 5.2.3(1), or to an equivalent capital regime;
- (ii) complies with its *financial resources requirement* and the *large exposures* requirements set out in rules 5.2.7(2) to (5), or with the equivalent rules of its regulator; and
- (iii) has systems and controls to monitor and control the sources of capital and funding of all other *financial institutions* within the group;

- (d) the firm notifies the FSA of any serious risk that could undermine the financial stability of the group as soon as it becomes aware of that risk;
- (e) the firm reports to the FSA all group large exposures as at, and within four months of, the end of each quarter;
- (f) the firm meets the conditions in rule 5.7.1(5); and
- (g) the firm has first notified the FSA in writing that it intends to rely on this rule.

After 5.7.1(4) R, insert the following new text.

5.7.1(5) R If the *firm* notifies the *FSA* under *rule 5.7.1(4)* that it will not apply the rules in this section, it must:

- (a) submit to *FSA* a consolidated supervision return within the time period specified by *SUP 16.7.36*, together with a consolidated profit and loss account;
- (b) ensure that each *firm* in the group deducts from its solo financial resources any quantifiable *contingent liability* in respect of other group entities;
- (c) ensure that the solo financial resources requirement of each *firm* in the group incorporates the full value of the expenditures of the *firm* wherever they are incurred on behalf of the *firm*; and
- (d) make a note in its audited financial statements that it is not subject to regulatory consolidated capital requirements.

- 5.7.1(6) G
- (a) The Capital Adequacy Directive (articles 7(4) to 7(6)) provides that a *competent authority* such as the *FSA* may waive *consolidated supervision* provided certain conditions are met. The conditions in *rule 5.7.1(4)* are mainly derived from the Capital Adequacy Directive.
  - (b) The conditions in *rule 5.7.1(5)* aim to ensure that the *firm* is protected from weaknesses in other group entities.
  - (c) In *rule 5.7.1(5)(b)*, *contingent liabilities* includes direct and indirect guarantees.
  - (d) *Rule 5.7.1(5)(c)* aims to ensure that the expenditure-based requirement incorporates the *firm's* actual ongoing annual expenditures (including any share of depreciation on fixed assets) where these have been met by another group entity.

- (e) The *FSA* may require further information from the *firm* if it considers that the *firm's* consolidated financial position raises undue risks to consumers. It may also seek reassurance that the *firm* has sufficiently robust *client assets* and *client money* controls - for example require a *skilled person's report*. The *FSA* may also use its *own initiative power* to impose conditions on the *firm*. This could include raising additional capital or further limitations on the *firm's* intra-group exposures.

## 5.7.2 SCOPE OF CONSOLIDATION

5.7.2(1) R For the purposes of the rules in section 5.7, a *firm's* group means the *firm* and:

- (a) any *EEA parent* in the group which is a *financial holding company*, a *credit institution*, or an *investment firm*;
- (b) any *credit institution*, *investment firm* or *financial institution* which is a *subsidiary* of the *firm* or of the *firm's EEA parent*; and
- (c) any *credit institution*, *investment firm* or *financial institution* in which the *firm* or one of the entities in (a) or (b) holds a *participation*.

5.7.2(2) R If a group exists under rule 5.7.2(1), the *firm* must also include in the scope of consolidation any *ancillary investment services undertaking* in the group.

5.7.2(3)G Rule 5.7.1(1) states what type of firm may be subject to consolidated supervision (trigger firm). Rule 5.7.2(1) states what type of relationship triggers the existence of a group for consolidated supervision purposes. Rules 5.7.2(1) and 5.7.2(2) specify what entities should be included in the scope of consolidated supervision.

5.7.2(4)G A *firm's parent* is a *financial holding company* if it carries out mainly *listed activities* or if its main business is to acquire holdings in companies undertaking these activities. For this purpose, the *FSA* interprets the phrases 'mainly' or 'main business' to mean the balance of business, i.e. over 50% of the relevant group or sub-group's balance sheet (measured on the basis of total assets).

## EXCLUSIONS

5.7.2(5) R A *firm* may, having first notified the *FSA* in writing, exclude from its group the following:

- (a) any entity the total assets of which are less than the smaller of the following two amounts:
  - (i) 10 million euros; or
  - (ii) 1% of the total assets of the group's *parent* or the undertaking that holds the *participation*;

provided that the total assets of such entities do not collectively breach these limits.

(b) any entity the inclusion of which within the group would be misleading or inappropriate for the purposes of *consolidated supervision*.

5.7.2(6) G (a) The *FSA* may require a *firm* to provide information about the position in the group of any undertaking excluded from the consolidation under rule 5.7.2(3).

(b) An exclusion under rule 5.7.2(5)(b) would normally be appropriate when an entity would be excluded from the scope of consolidation under the relevant UK generally accepted accounting principles.

### 5.7.3 CONSOLIDATED SUPERVISION REQUIREMENT

5.7.3(1) R A *firm* must at all times ensure that its group maintains *group financial resources* in excess of its *group financial resources requirement*.

5.7.3(2)R A *firm* must at all times comply with *large exposures* limits applied on a group basis.

5.7.3(3)G Where the *firm* is in breach of rules 5.7.3(1) or 5.7.3(2), the *FSA*, in deciding whether enforcement action is appropriate, will consider the full circumstances of the case, including any remedial steps taken by the *firm*. Remedial steps could include the production of an action plan that is acceptable to the *FSA* that will rectify the situation.

### 5.7.4 GROUP FINANCIAL RESOURCES

5.7.4(1) R A *firm* must calculate its *group financial resources* on the basis of the consolidated accounts of the relevant group, subject to the adjustments in rule 5.7.4(2).

5.7.4(2) R (a) Subject to rule 5.7.4(2)(b), a *firm* must calculate its *group financial resources* according to the rules in Table 5.2.2(1), excluding illiquid assets adjustments and qualifying property adjustments, but with minority interests being allowed as Group Tier 1 capital.

(b) Material holdings must be recalculated on a group basis and deducted in arriving at *group financial resources*.

5.7.4(3) G In rule 5.7.4(2), material holdings, illiquid assets and qualifying property have the meaning in Table 5.2.2(1).

5.7.4(4) G The form in *SUP 16 Ann 5R*, together with the *guidance* in *SUP 16 Ann 17G*, show the mechanics of the calculation.

5.7.4(5) G A *firm* may apply for a *waiver* of *rule 5.7.4.(1)* to permit an aggregation approach to determine *group financial resources*. Any *waiver* application should guarantee future compliance with any relevant own funds limit.

### 5.7.5 GROUP FINANCIAL RESOURCES REQUIREMENT

5.7.5(1)R A *firm* must calculate its *group financial resources requirement* as the aggregate of:

- (a) the sum of the financial resources requirements of the entities within the scope of consolidation calculated in accordance with *rule 5.7.5(2)*, except that requirements in respect of intra-group balances with other entities within the scope of consolidation must be excluded; the financial resources requirement must be reduced by the amount of any qualifying property adjustment;
- (b) the sum of the illiquid assets held by each entity within the scope of consolidation, except that illiquid assets held by any such entity in another such entity must be left out of account.

The financial resource requirements of entities in which the group holds a *participation* must be included proportionately.

5.7.5(2)R Financial resources requirements for individual entities in the group are:

- (a) for *firms* regulated by the *FSA*, their regulatory capital requirement under *FSA* rules ;
- (b) for entities regulated by an *EEA* regulator or one of the regulators listed in *IPRU(INV)* 10-App 59 or *IPRU(BANK)* CS Appendix D, their local regulatory capital requirement; and
- (c) for other entities in the group, a notional financial resources requirement calculated as if the entity were regulated by the *FSA*.

- 5.7.5(3) G
- (a) For the purposes of *rule 5.7.5(2)(c)*, the notional financial resources requirement of group entities should be calculated as if the entities were subject to the rules in Chapter 5 of *IPRU(INV)*.
  - (b) For the purposes of calculating an *expenditure based requirement*, no account should be taken of expenses that have been recharged to another entity included in the scope of consolidation. For example, in calculating the notional requirement for a service company, the *expenditure based requirement* should be calculated net of recharged expenses. This is to avoid double counting of the expenses.

5.7.5(4)G A *firm* may apply for a *waiver* of rule 5.7.5 to permit a ‘line by line’ approach to determine its *group financial resources requirement*. Any *waiver* application should demonstrate (where relevant) that the constraints for intra-group offsets under the Capital Adequacy Directive (article 7) are met. A *firm* should also demonstrate that calculating its requirement in this way does not result in a distortion of the *group financial resources requirement*.



## APPENDIX 1 (INTERPRETATION)

### GLOSSARY OF TERMS FOR CHAPTER 5 (FORMER IMRO FIRMS)

Insert the following new definitions in the appropriate alphabetical position.

<i>ancillary investment services undertaking</i>	means an undertaking the principal activity of which consists in owning or managing property, managing data-processing services, or any other similar activity which is ancillary to the principal activity of one or more <i>investment management firms</i> .
<i>CAD firm</i>	means a <i>firm</i> subject to the requirements of the Capital Adequacy Directive (CAD)(93/06/EEC), excluding a person to whom the CAD does not apply under article 2(2) of that directive.
<i>CAD Article 3 exempting criteria</i>	means the following criteria in respect of the <i>firm's</i> dealing positions: <ul style="list-style-type: none"><li>- such positions arise only as a result of the <i>firm's</i> failure to match investors orders precisely;</li><li>- the total market value of all such positions is subject to a ceiling of 15% of the <i>firm's</i> initial capital; and</li><li>- such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question.</li></ul>
<i>contingent liability</i>	has the meaning in FRS 12 which states that it is: <ul style="list-style-type: none"><li>(a) a possible obligation that arises from past events and whose existence will be confirmed only by the occurrence of one or more uncertain future events not wholly within the entity's control or</li><li>(b) a present obligation that arises from past events but is not recognised because:<ul style="list-style-type: none"><li>(i) it is not probable that a transfer of economic benefits will be required to settle the obligation; or</li><li>(ii) the amount of the obligation cannot be measured with sufficient reliability.</li></ul></li></ul>
<i>EEA parent</i>	means a <i>firm's</i> direct or indirect <i>parent</i> which has its head office in the <i>EEA</i> .
<i>financial holding company</i>	means a <i>financial institution</i> the <i>subsidiary undertakings</i> of which are either exclusively or mainly <i>credit institutions</i> , <i>investment firms</i> and <i>financial institutions</i> , one of which at least is a <i>credit institution</i> or an <i>investment firm</i> .
<i>financial institution</i>	means an undertaking other than a <i>credit institution</i> , the principal activity of which is to acquire holdings or to carry on a <i>listed activity</i> .
<i>group financial resources</i>	means the resources of a <i>firm's</i> group calculated in accordance with <i>rule 5.7.4</i> (Group financial resources).
<i>group financial resources</i>	means the requirement that a <i>firm's</i> group maintains financial resources calculated in accordance with <i>rule 5.7.5</i> (Group financial

<i>requirement</i>	resources requirement).
<i>listed activity</i>	means a listed activity within the meaning of the <i>BCD</i> , that is one or more of the following activities: <ul style="list-style-type: none"> <li>(a) lending;</li> <li>(b) financial leasing;</li> <li>(c) money transmission services;</li> <li>(d) issuing and administering means of payment;</li> <li>(e) guarantees and commitments;</li> <li>(f) trading for own account or for the account of customers in: <ul style="list-style-type: none"> <li>• money market instruments (cheques, bills, certificates of deposit, etc);</li> <li>• foreign exchange;</li> <li>• financial futures and options;</li> <li>• exchange and interest rate instruments;</li> <li>• transferable securities;</li> </ul> </li> <li>(g) participation in share issues and the provision of services related to such issues;</li> <li>(h) corporate finance advice;</li> <li>(i) money broking;</li> <li>(j) portfolio management and advice; or</li> <li>(k) safekeeping and administration of securities.</li> </ul>
<i>parent</i>	means any parent undertaking as defined in section 258 of the Companies Act 1985 or paragraph 14 of Financial Reporting Standard No 2 and any undertaking which effectively exercises a dominant influence over another undertaking.
<i>participation</i>	means a holding either direct or indirect of 20% or more of the voting rights or capital of another undertaking.

Delete the definition of *consolidated supervision* and replace by the following text.

<i>consolidated supervision</i>	means the application of Chapter 5 of the Interim Prudential Sourcebook for Investment Businesses in accordance with <i>rules</i> 5.7.1(1) to 5.7.5(2).
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## Annex B

### Amendments to the Supervision Manual

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new annex is inserted, the place where it goes is indicated but it is not underlined.

...

Transitional provisions

...

2            Table                            Transitional provisions applying to the Supervision manual only

...

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
12 ...	...				
<u>12A</u>	<u>SUP 16.7.38</u>	<u>R</u>	<p><u>An investment management firm which, before 1 December 2003, was already submitting consolidated financial returns using the form in:</u></p> <p><u>(a) SUP 16 Ann 10R; or</u>  <u>(b) SUP 16 Ann 7R (with associated guidance in SUP 16 Ann 8G);</u></p> <p><u>may continue to use these forms instead of the consolidated financial resources return in SUP 16 Ann 5R.</u></p>	<p><u>From 1 December 2003 until, but not including, the date on which the provisions of the Financial Groups Directive take effect in the United Kingdom.</u></p>	<p><u>1 December 2003</u></p>
...					

...

16.7.36R Table: Financial reports from an investment management firm (see SUP 16.7.35R)

Report	Frequency	Due date
...		
Monthly Financial Return (only for ...)	Monthly	1 month after month end
<u>Consolidated financial resources return (only for firms subject to IPRU(INV) 5.7.1(1)R)</u>	<u>Half yearly</u>	<u>4 months after end of six-month period</u>
<u>If the firm's ultimate parent is a mixed-activity holding company, the annual accounts of the mixed-activity holding company (Note 5)</u>	<u>Yearly</u>	<u>As soon as available after year-end</u>
<p>...</p> <p><u>Note 5: Mixed-activity holding company means a parent, other than a financial holding company (as defined in IPRU(INV) Chapter 5 Glossary), an investment firm or a credit institution, the subsidiaries of which include at least one investment firm or credit institution.</u></p>		

...

16.7.38R An investment management firm must submit the required reports in accordance with, and in the same format as, the forms contained in SUP 16 Ann 5R, and according to the requirements contained in section 4 of that annex and SUP 16 Ann 17G.

- 16.7.39G (1) The FSA expects the annual accounts to be submitted together with the auditor's report required by SUP 3.9.4R.
- (2) Notes giving guidance on the completion of the consolidated financial resources return are contained in SUP 16 Ann 17G. The guidance in SUP 16.3.25G (Reports from groups) is also relevant.

...



Insert the following form at the end of SUP16 Annex 5R

**CONSOLIDATED FINANCIAL RESOURCES RETURN FOR INVESTMENT MANAGEMENT FIRMS**

**PART 1: GROUP FINANCIAL RESOURCES:**

Name of regulated firm:

Name of ultimate EEA financial holding company for group ("parent"):

**Group Tier 1:**

ordinary share capital	<input type="text"/>
share premium	<input type="text"/>
audited consolidated reserves	<input type="text"/>
non-cumulative preference shares	<input type="text"/>
other reserves	<input type="text"/>
minority interests	<input type="text"/>
externally verified interim profits	<input type="text"/>

**Less:**

intangible assets	<input type="text"/>
material unaudited consolidated losses since balance sheet date	<input type="text"/>
investments in own shares	<input type="text"/>

**Total Group Net Tier 1:**

**Group Tier 2:**

non-fixed-term cumulative preference shares	<input type="text"/>
non-fixed-term long term subordinated loans	<input type="text"/>
consolidated revaluation reserves	<input type="text"/>

1.1

fixed-term cumulative preference shares	<input type="text"/>
fixed-term long term subordinated loan	<input type="text"/>

B2

**Total Group Tier 2:  
B=B1+B2**

B

**Group Tier 3:**

short term subordinated loan	<input type="text"/>
unaudited consolidated trading book profits	<input type="text"/>

**Total Group Tier 3:**

C

**Group Material Holdings in credit and financial institutions:**

D

**Group Financial Resources:**

E

$E = A + B1 + B2 + C - D$   
 B, B1, B2, and C are subject to eligibility limits as set out in IPRU(INV) Table 5.2.2(1) Part II (Item 1: Ratios)

**PART 2: GROUP FINANCIAL RESOURCES REQUIREMENT:**

**Name of regulated firm:**

**Name of ultimate EEA financial holding company for group (“parent”):**

F	F1	F2
Name of <i>subsidiary</i> or <i>participation</i>	% ownership	Local regulator (or state if unregulated)

G	H
Financial Resources Requirement of F	State how Financial Resources Requirement has been calculated.



(G1)

Parent’s Financial Resources Requirement

(I)

**Total Group Financial Resources Requirement (=G1+I)**

(J)

Total Group Financial Resources (=E)

**Total Group Surplus / (Deficit) (=E-J)**

(K)

Insert the following new text as SUP16 Annex 17G

## CONSOLIDATED FINANCIAL RESOURCES RETURN FOR INVESTMENT MANAGEMENT FIRMS

### GUIDANCE PART 1: Group Financial Resources

<i>Ref</i>	<i>Guidance</i>
A	<p>The group should calculate its financial resources based on the consolidated financial statements prepared at the level of the ultimate <i>EEA</i> financial holding company in the group. The financial statements should be prepared in accordance with the <i>UK</i> generally accepted accounting principles.</p> <p>The group Tier 1 capital should be calculated by taking the relevant capital items from the consolidated balance sheet. Deductions must be made in arriving at Tier 1 for intangible assets (including goodwill arising from consolidation), investments in own shares and for material unaudited losses since the balance sheet date. Unaudited losses should be regarded as material if they exceed 10% of Group Tier 1 before taking into account this deduction.</p>
B1	This is the sum of non-fixed-term (undated) cumulative preference shares, non-fixed-term (undated) long-term subordinated loans and revaluation reserves and other consolidated reserves.
B2	This is the sum of fixed-term cumulative preference shares and fixed-term long-term subordinated loans.
C	The total of short-term subordinated loans external to the group and unaudited consolidated profits arising from trading book activities should be shown here.
D	The definition of material holdings in non-group <i>credit institutions</i> and <i>investment firms</i> should be derived on the basis of the definition of material holdings in <i>IPRU(INV)</i> Table 5.2.2(1) Part II (Item 5) except that references to “own funds” should be replaced by “consolidated own funds”. For this purpose consolidated own funds is equal to A+B after the application of the eligibility limits as set out in <i>IPRU(INV)</i> Table 5.2.2(1) Part II (Item 1).
E	<p>The Group Financial Resources should be shown here. This represents the sum of eligible capital in A, B1, B2 and C, minus the deduction in D. No other deductions should be made. Illiquid assets adjustments that are made at the solo level should be included in the Group Financial Resources Requirement.</p> <p>The limits applied at the group level to the inclusion of items in the group financial resources should be the same as the limits set out in</p>



<i>Ref</i>	<i>Guidance</i>
	<i>IPRU(INV)</i> Table 5.2.2(1) Part II (Item 1: Ratios).

## GUIDANCE PART 2: Group Financial Resources Requirement

Ref	Guidance
F	<p>List the name of each <i>subsidiary</i> and <i>participation</i>.</p> <p>A <i>firm</i> may combine several entities together where these are not material in relation to the group (for example, entities where total assets are in aggregate less than 5% of the group's total assets). The <i>firm</i> should list the relevant entities in a note to the return and should be able to demonstrate the contribution of the individual entities to the group calculation.</p>
F1	<p>List the percentage interest in the <i>subsidiary</i> or <i>participation</i> held by the parent. If the shares are not held directly by the parent, but by another group company, enter the effective percentage interest of the parent in the company. Where the entity is a <i>subsidiary</i> of a <i>subsidiary</i> of the parent, indicate (S) after the effective percentage interest. Such an entity will be treated as a <i>subsidiary</i> of the parent and will be included in full in the calculations.</p>
F2	<p>Specify if the group entity is regulated by the <i>FSA</i> or another regulator. If the entity is unregulated, state "unregulated".</p>
G	<p>The financial resources requirement of entity F should be shown here. The financial resources requirement for a participation must be pro-rated (i.e. it should be multiplied by F1).</p> <p>This should be equal to the solo financial resources requirement calculated in accordance with <i>IPRU (INV)</i> 5.2.3 plus the illiquid assets adjustment calculated in accordance with <i>IPRU (INV)</i> Table 5.2.2(1) part II paragraph 10, but less any qualifying property adjustment.</p> <p>For unregulated firms this should be equal to the proxy financial resources requirement, which should also include illiquid assets adjustments (where appropriate).</p>
G1	<p>This is the sum of figures in column G.</p>
H	<p>Details of the method used to calculate G (the financial resources requirement) for each <i>firm</i> should be given here. For example for an <i>FSA</i>-regulated firm column H should contain the <i>IPRU</i> reference (eg <i>IPRU(INV)</i> Chapter 10). For an overseas regulated firm where the prudential calculation is recognised by <i>FSA</i> as being equivalent the applicable overseas regulator should be given.</p> <p>For proxy requirements for unregulated firms column H should state the regulatory rules that have been applied to calculate the proxy requirement.</p>

<i>Ref</i>	<i>Guidance</i>
I	<p>The financial resources requirement of the parent should be shown here.</p> <p>This should be equal to the solo financial resources requirement (excluding any requirement in respect of intra-group balances) and any adjustments made to financial resources in accordance with rule 5.7.5(1).</p>
J	The Group Financial Resources Requirement should be shown here. It is equal to the sum of G1 and I.
K	The overall group surplus or deficit is equal to the difference between the Total Group Financial Resources (E) and the Group Financial Resources Requirement (J).

**CONFLICTS OF INTEREST (CORPORATE FINANCE AND INVESTMENT ANALYSTS) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
- (1) section 138 (General rule-making power);
  - (2) section 149 (Evidential provisions);
  - (3) section 156 (General supplementary powers); and
  - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 February 2004.

**Amendments to the Conduct of Business sourcebook**

- D. The Conduct of Business sourcebook is amended as set out in Annex A.

**Amendments to the Glossary**

- E. The Glossary is amended as set out in Annex B.

**Citation**

- F. This instrument may be cited as the Conflicts of Interest (Corporate Finance and Investment Analysts) Instrument 2003.

15 October 2003  
By Order of the Board

## Annex A

### Amendments to the Conduct of Business sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section of text is being inserted, the place where it goes is indicated and it is not underlined.

1.3.5 G Firms are reminded that the definition of *inter-professional firm* does not include:

(3) ... ; or

(4) corporate finance business.

...

1.6.4 R Table: Corporate finance business

This table belongs to COB 1.6.3R

COB	Subject
...	
5.4	Customers' understanding of risk
<u>5.10</u>	<u>Corporate finance business issues</u>
...	

...

#### **Investment research**

2.2.4A G An offer or agreement to publish *investment research* which is, or to change a *published recommendation* so that it becomes, favourable to its subject (even if the subject is a *customer of the firm*), is an example of offering or accepting an *inducement which is likely to conflict to a material extent with the firm's duties to its other customers.* (See also COB 5.10 in relation to inducements related to *corporate finance.*)

...

After COB 5.9 insert the following new section:

#### **5.10 Corporate finance business issues** **Application**

5.10.1 R This section applies to a *firm* that conducts *corporate finance business.*

## Purpose

- 5.10.2 G The purpose of this section is to provide *guidance* on the management of conflicts of interest in particular situations arising in the context of *corporate finance business*. The *FSA* expects that in most *corporate finance business* *Principle 1* (Integrity), *Principle 2* (Due skill, care and diligence), *Principle 5* (High standards of market conduct), *Principle 6* (Customers' interests) and *Principle 8* (Conflicts of interest), will be particularly relevant. The *guidance* in this section is not intended to be exhaustive, and is in addition to other provisions which apply to the *firm* (see *COB 1.6* which specifies these). It also supplements other provisions in the *Handbook* (see, in particular, *COB 2.2* (Inducements and soft commission) and *COB 7.1* (Conflict of interest and material interest)).

## Securities offerings

- 5.10.3 G The *Principles* referred to in *COB 5.10.2G* are highly relevant to the management of an offering of a *security* by a *firm*. They require a *firm* to manage conflicts of interest which may arise in a way which ensures that all its *clients* are treated fairly and which ensures that the *firm* is conducting its business with integrity and according to proper standards of business.
- 5.10.4 G The overriding responsibility of the *firm* is to have in place systems, controls and procedures to ensure that the duties which the *firm* owes to its *clients* are identified effectively and discharged appropriately. In particular, the *firm's* processes and procedures will need to take account of the following:
- (1) when carrying out a mandate to manage an offering of *securities*, the *firm's* duty for that business is to its corporate finance *client* (in many cases, the corporate issuer or seller of the relevant *securities*).
  - (2) a *firm's* responsibilities to provide services to the *firm's* investment *clients* (that is, those on the investment *client* side of the *Chinese wall* (see *COB 5.10.5G*)) are unchanged, even if they have an interest in acquiring *securities* in the offering. The *firm* will need to ensure that it complies with the relevant regulatory obligations to its investment *clients*, such as *COB 5.3* (Suitability).
- 5.10.5 G *Firms* will need to have in place systems, controls and procedures, appropriate to its structure and business, and to the sorts of offerings in which they are involved, for identifying and managing conflicts of interest (and see *SYSC 3* (Systems and controls)). Examples which the *FSA* considers that a *firm* should consider (not every example will be relevant or appropriate to every situation or *firm*) include:
- (1) at an early stage, for example before it accepts a mandate to manage the offering, discussing or agreeing with its corporate finance *client* relevant aspects of the offering process, such as:
    - (a) the process the *firm* proposes to follow in order to determine what recommendations it will make about allocations for the offering;
    - (b) details of how the target investor group, to whom it is planned to offer the *securities*, will be identified;
    - (c) the process through which recommendations on allocation and pricing are prepared, and by whom; and

- (d) (if relevant) that it may recommend placing *securities* with an investment *client* of the *firm* for whom the *firm* provides other services, with the *firm's* own proprietary book, or with an *associate*, and that this represents a potential conflict of interest;
- (2) having internal arrangements designed to ensure that the *firm* will give unbiased and full advice to the corporate finance *client* about the valuation and pricing for an offering (the *FSA* accepts that valuation is a complex process and great precision may not always be possible in a *security* offering);
- (3) having internal arrangements under which individuals or business units in the *firm*, whose responsibilities are ordinarily to provide services to the *firm's* investment *clients* (that is, those on the investment *client* side of the *Chinese wall*), are not involved directly in decisions about recommendations to a corporate finance *client* on pricing (although they might, for example, be permitted to provide information about likely investor interest to those advising the corporate finance *client*);
- (4) ensuring that its systems, controls and procedures to identify and manage conflicts of interest also cover the allocation process for an offering of *securities*; for example:
  - (a) having internal arrangements under which the allocation process and the development of recommendations on allocation (names and amounts proposed to be allocated) are made to the corporate finance *client* only by staff who do not have any responsibilities for servicing investment *clients*;
  - (b) inviting the corporate finance *client* to participate actively in the allocation process so that its proper interests can be taken into account effectively, including making available to the corporate finance *client* appropriate information to support the proposed recommendations on allocation;
  - (c) basing recommendations about allocation and pricing on objectives agreed with the corporate finance *client*;
  - (d) making the initial recommendation for allocation to *private customers* of the *firm* as a single block and not on a named basis;
  - (e) having internal arrangements under which senior personnel in the department (or equivalent business unit), who are responsible for providing services to *private customers*, make the individual allocation recommendations for allocation to *private customers* of the *firm*; and
  - (f) disclosing to the *issuer*, after completion of the transaction, details of the allocations which were actually made; and
- (5) having internal arrangements under which allocation recommendations are not determined by the level of business which a *firm* does or hopes to do with any other *client* (see also *COB 2.2* (Inducements and soft commissions)); for example:
  - (a) any allocation to a *private customer* of the *firm* should be justifiable in terms of the process for developing allocation recommendations which

was disclosed to the corporate finance *client* at the outset (as well as in terms of any other obligations which the *firm* may have - for example under *COB* 5.3 (Suitability) or *COB* 7.7 (Aggregation and allocation)); and

- (b) any recommendation for allocation to the proprietary trading desk of the *firm* or to an *associate* or *affiliate* of the *firm* should be justifiable in terms of the objectives of the allocation policy and should be consistent with the process for developing allocation recommendations disclosed by the *firm* at the outset.

- 5.10.6 G One control which a *firm* might use is a review by the compliance function after the event of how well the *firm's* conflicts of interest management processes worked in relation to an issue. This might be of particular use if there are significant differences between the recommendation on price and subsequent market behaviour. The review might examine how the recommendations of the *firm* on pricing were reflected in market dealings after the issue. If significant differences are observed, it may be appropriate to identify why, and what that discloses about the way in which the *firm's* systems and controls operated in relation to that offering. The frequency of any review is a matter for the *firm*, in the light of its business and structure.

**Securities offerings: behaviour in breach of the Principles**

- 5.10.7 G (1) For the avoidance of doubt, the *FSA* considers that the following would each be a breach of the *Principles* referred to in *COB* 5.10.2G, and a breach of *COB* 2.2.3R:
- (a) an allocation made as an inducement for the payment of excessive compensation in respect of unrelated services provided by the *firm*; for example, very high rates of commissions paid to the *firm* by an investment *client*, or an investment *client* providing very high volumes of business at normal levels of commission (which may also be a breach of *COB* 7.2 (Churning and switching));
  - (b) an allocation made to a senior executive or a corporate officer of an existing or potential corporate finance *client*, or of a *listed* company, in consideration for the future or past award of *corporate finance business*; and
  - (c) an allocation which is expressly or implicitly conditional upon the receipt of orders or the purchase of any other service from the *firm* by the investor, or any *body corporate* of which the investor is a corporate officer.
- (2) A *firm's* systems, controls and procedures should, therefore, be designed to prevent these sorts of behaviour.

- 7.1.1 ... R (1) ...
- (2) *COB* 7.1.4 E (1) and (2) do not apply in relation to investment research (see *COB* 7.3 (Dealing ahead of investment research)).



...

### 7.3 **Dealing ahead of investment research**

#### **Application**

- 7.3.1 R This section applies to a *firm* ~~when if it~~, or any of its *associates*, prepares *investment research* for publication or distribution to its *clients*, or intends to publish or distribute *investment research* to its *clients* ~~a written recommendation, or a piece of research or analysis, to *customers* that relates to a *designated investment*.~~

#### **Purpose**

- 7.3.2 G *Principle 6* (Customers' interests) requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. *Principle 8* (Conflicts of interest) requires a *firm* to manage conflicts of interests fairly, both between itself and its *customers* and between a *customer* and another *client*. In conjunction with *Principle 1* (Integrity), *Principle 2* (Due skill, care and diligence) and *Principle 5* (High standards of market conduct), they require a *firm* to manage conflicts of interest which may arise in a way which ensures that all its *clients* are treated fairly and which ensures that the *firm* is conducting its business with integrity and according to proper standards of business. This section aims to ensure that ~~either~~ a *firm* pays due regard to the interests of its ~~*eustomersclients*~~ by ~~postponing~~ not undertaking an *own account transaction* when the *firm* or its *associate* publishes *investment research* ~~a written recommendation, except in very limited circumstances or, when this is not practicable or desirable generally in the interests of the *firm's customer*, that any dealing does not unfairly disadvantage the *customer*.~~

- 7.3.2A G The *FSA* regards circumstances in which a *firm* deals in *designated investments* that are the subject of *investment research* which it publishes to *clients* as a significant potential source of conflicts of interest. The conflicts involved are such that the *FSA* does not consider that they can be managed adequately by disclosure of their existence.

- 7.3.2B G The *FSA* considers that these conflicts of interest do not arise if equity analysts or others prepare research papers or analyses relating to *designated investments* solely for a *firm's* own internal use, for example, in order to inform its decisions about managing its proprietary trading or its strategic direction. The *FSA* considers that it is inappropriate for an analyst to prepare research papers or analyses which are intended, first for internal use by the *firm*, and then for later publication to *clients*.

#### **Requirement not to undertake to postpone own account transactions**

- 7.3.3 R If a *firm* or its *associate* intends to publish or distribute *investment research* to *eustomersclients* or prepares *investment research* for publication or distribution to its *clients* ~~a written recommendation, or a piece of research or analysis, that relates to a *designated investment*,~~ unless COB 7.3.4R applies, the *firm* must:

- (1) ...
- (2) ...

until the *customers/clients* for whom the publication was principally intended have had (or are likely to have had) a reasonable opportunity to act upon it.

...

### Exceptions

7.3.4 R COB 7.3.3 R does not apply if:

- (1) ~~the publication could not reasonably be expected to affect significantly the price of the designated investment concerned or any related designated investment; or [deleted]~~
- (2) ...
- (3) ... ~~or~~
- (4) ~~the firm has taken reasonable steps to ensure that it or its associate needs to deal to fulfil a customer order that is likely to result from the publication, and that doing so will not cause the price of the designated investment or related designated investment that is the subject of the written recommendation, or piece of research or analysis, to move against a customer's interest by a material amount; or [deleted]~~
- (5) ~~the firm or its associate discloses in the publication that the firm or its associate has undertaken or may undertake an own account transaction in the designated investment concerned or any related designated investment. [deleted]~~

7.3.5 G The exceptions in COB 7.3.4R (2) and (3) allow a firm to continue to provide key services to the market and to its customers even if the firm would be considered to have knowledge of the timing and content of the investment research which is intended for publication to clients when, for example, it is impracticable for the firm to put in place a Chinese wall because the firm has few employees or cannot otherwise separate its functions.

...

7.13.6A G For the purposes of COB 7.13.6 R(2), the FSA considers that an investment analyst is likely to be involved to a material extent in the firm's designated investment business.

### Reasonable steps

7.13.7 E (1) For the purposes of COB 7.13.4R, a firm's "reasonable steps" should ensure that:

(a) ...

(aa) an investment analyst may not undertake a personal account transaction in a designated investment if the investment analyst prepares investment research which is published or distributed to clients:

(i) on that designated investment or its issuer; or

(ii) on a related investment, or its issuer;

unless the *personal account transaction* is:

- (iii) not contrary to any published or distributed recommendation for which he is responsible as an *employee* of the *firm*, which has not been withdrawn; or
- (iv) to realise the cash value of a holding or position, is undertaken in order to meet an obligation of the *investment analyst* which is not related to any *designated investment* within (i) or (ii), and is one to which the *firm* has given its permission in writing;

(b) ...

(c) ...

...

7.13.10A G (1) Because of the nature of the conflicts of interest that arise, a *firm* may decide:

(a) that an *investment analyst* should be prohibited from carrying out any *personal account transactions* at all; or

(b) that an *investment analyst* should be prohibited from undertaking a *personal account transaction* in a *designated investment* if the *investment analyst* prepares *investment research*:

(i) on that *designated investment* or its *issuer*; or

(ii) on a related *investment*, or its *issuer*; or

(iii) on a *designated investment* or an *issuer* which belongs to the same industry or business sector as that *designated investment*;  
or

(c) that there should be a prohibition on *personal account transactions* by *investment analysts* for a limited time covering a period before and after the intended publication date for *investment research*.

(2) If a *firm* does impose a prohibition, it may wish to make clear to the *employee* whether or not the prohibition extends to the sorts of transaction which the *Glossary* excludes from the definition of *personal account transaction* (for example, transactions in *units* in *regulated collective investment schemes*, and certain discretionary transactions).

...

## Annex B

### Amendments to the Glossary

Insert the following new definitions in the Glossary in the appropriate alphabetical position:

- investment analyst* an *employee* of a *firm* who prepares *investment research* or the substance of *investment research*.
- investment research* a *document* (other than a *personal recommendation*), or material the substance of which is common to a number of documents although worded as if they are *personal recommendations*, which contains one or more of the following:
- (a) the results of research into a *designated investment* or its *issuer*;
  - (b) analysis of factors likely to influence the future performance of a *designated investment* or its *issuer*; and
  - (c) advice or recommendations based on those results or that analysis.

**MORTGAGES: CONDUCT OF BUSINESS SOURCEBOOK  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes the rules and gives the guidance in this instrument in the exercise of the powers listed in Schedule 4 to the Annex to this instrument (Powers exercised).
- B. The rule-making powers listed in that schedule are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 31 October 2004.

**Citation**

- D. (1) This instrument may be cited as the Mortgages: Conduct of Business Sourcebook Instrument 2003.  
  
(2) The Annex to this instrument (including its schedules) may be cited as the Mortgages: Conduct of Business sourcebook (or MCOB).

By order of the Board  
15 October 2003

## **Annex**

### **Mortgages: Conduct of Business sourcebook**

**MCOB Transitional Provisions**

<b>(1)</b>	<b>(2)</b> Material to which the transitional provision applies	<b>(3)</b>	<b>(4)</b> Transitional provision	<b>(5)</b> Transitional provision: dates in force	<b>(6)</b> Handbook provision: coming into force
1	Every <i>rule</i> in <i>MCOB</i> unless the context otherwise requires and subject to any more specific transitional provision relating to the matter.	R	If the application of any provision in <i>MCOB</i> is dependent on the occurrence of a series of events, some of which occur before, and some of which occur after, 31 October 2004, the provision applies with respect to the events that occur after 31 October 2004.	From 31 October 2004 for six months.	31 October 2004

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
2		G	<p>(1) For example, if a <i>customer</i> submits an application for a <i>regulated mortgage contract</i> before 31 October 2004, a <i>firm</i> responding to that application after 31 October 2004 will not be required to provide the <i>customer</i> with an <i>illustration</i> in accordance with <i>MCOB 5</i>. However, the <i>firm</i> will have to comply with the requirements in <i>MCOB</i> when taking any further action (such as issuing an offer) regarding the application after 31 October 2004.</p> <p>(2) An <i>offer document</i> may have to be issued under transitional provision 1R even though no <i>illustration</i> has been given out (because that part of the transaction occurred before 31 October 2004). In such cases the suitably adapted <i>illustration</i> required by <i>MCOB 6.4.4R</i> would need to omit:</p> <p>(a) the required text in <i>MCOB 6.4.4R(5)(b)</i>; and</p> <p>(b) Section 2 of the <i>illustration</i> entirely.</p>		
3		G	<p><i>MCOB</i> applies to <i>regulated mortgage contracts</i> entered into on or after 31 October 2004. Variations made after that date to mortgage contracts entered into before that date are not subject to <i>FSA regulation</i> but may be subject to the Consumer Credit Act 1974. <i>AUTH App 4.4.13G</i> contains guidance on the variation of contracts entered into before 31 October 2004.</p>		



(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
4	MCOB 2.2.6R	R	<p>(1) A <i>firm</i> must disclose to a <i>customer</i> :</p> <ul style="list-style-type: none"> <li>(a) the extent to which transactions will be subject to <i>FSA</i> regulation, stating in particular the position with regard to advice (where given), disclosure and offer;</li> <li>(b) a statement that the Consumer Credit Act 1974 will not apply to the <i>regulated mortgage contract</i> and that, where applicable, any Consumer Credit Act rights or requirements set out in previous communications will not apply; and</li> <li>(c) details concerning complaints and redress for services provided before 31 October 2004 and those provided after 31 October 2004.</li> </ul> <p>(2) Unless already given to the <i>customer</i> before 31 October 2004, the information required in (1) must be communicated in a <i>durable medium</i> at the time of the first contact between the <i>firm</i> and the <i>customer</i> after 31 October 2004.</p>	From 31 October 2004 for six months.	31 October 2004

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
5	MCOB 2.2.6R	G	<p>At 31 October 2004, there will be cases where a <i>firm</i> has issued documentation which satisfies the requirements of the Consumer Credit Act 1974, but where no CCA agreement has been concluded. A <i>customer</i> may even have signed a CCA agreement, which has not been executed before the onset of mortgage regulation. In such cases, a <i>firm</i> must take care to avoid giving the impression that any agreement reached after 31 October 2004 will be subject to the Consumer Credit Act 1974, as to imply otherwise might leave the <i>firm</i> in breach of MCOB 2.2.6R. This is a particular risk given that any initial documentation that the <i>customer</i> will have received may have been in compliance with that Act. Equally, it is possible that once mortgage regulation begins, the customer would, in the absence of any information from the <i>firm</i>, form the view that the entire transaction is regulated by the FSA. Accordingly, in such a case, a <i>firm</i> must provide the <i>customer</i> with the information required by transitional provision 4R(1) and at the time and in the manner required by transitional provision 4R(2), in order to clarify the position.</p>		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
6	MCOB 3.6	R	<p>(1) Providing it does not state or imply that protections under the Consumer Credit Act 1974 apply, a <i>non-real time qualifying credit promotion</i> communicated:</p> <p>(a) in a directory (or similar publication) that is updated annually;</p> <p>(b) otherwise than in (a);</p> <p>after 31 October 2004 that was first communicated before that date will be in compliance with the rules in MCOB 3.6 if it satisfies the advertising requirements under the Consumer Credit Act 1974.</p> <p>(2) Paragraph (1) does not have effect if, and to the extent that, it would be inconsistent with any community obligation of the <i>United Kingdom</i>.</p>	<p>(1)(a) From 31 October 2004 for one year;</p> <p>(1)(b) From 31 October 2004 for three months.</p>	31 October 2004
7	MCOB 3.6	G	<p>(1) <i>Mortgage lenders and mortgage administrators</i> should take care to ensure that where they rely on transitional provision 6R for compliance with MCOB 3.6, they do not indicate in the <i>non-real time qualifying credit promotion</i> that protections under the Consumer Credit Act 1974 apply.</p> <p>(2) Where transitional provision 6R applies, a <i>firm</i> that confirms compliance with the rules in MCOB 3 under MCOB 3.9, or approves the <i>non-real time qualifying credit promotion</i> under MCOB 3.11 should confirm that the promotion meets the requirements of the Consumer Credit Act 1974.</p>		

## 1 APPLICATION AND PURPOSE

### 1.1 Application and purpose

#### Application

1.1.1 G *MCOB* applies as described in this chapter.

#### Purpose

1.1.2 G The purpose of this chapter is to set out to whom, for what activities, and within what territorial limits the *rules, evidential provisions* and *guidance* in *MCOB* apply. This chapter also provides *guidance* on the application of other parts of the *Handbook* to a *firm* that carries on *regulated mortgage activities*.

### 1.2 General application: who? what?

1.2.1 R *MCOB* applies to every *firm* that:

- (1) carries on *regulated mortgage activities* (subject to *MCOB* 1.2.3R(1); or
- (2) *communicates or approves a qualifying credit promotion*.

#### Firm types and the regulated mortgage activities

1.2.2 G The application of most of *MCOB* is expressed by reference to four types of *firm*: *mortgage lenders, mortgage administrators, mortgage arrangers* and *mortgage advisers*. This includes those *firms* that provide business loans to *customers* under a *regulated mortgage contract* (see *MCOB* 1.2.3R to *MCOB* 1.2.9G). A single *firm* may fall into more than one of these types. *Guidance* on these *firm* types, the *regulated mortgage activities* which they carry on, a description of what those activities cover and what is excluded is set out in *MCOB* 1 Ann 1G. *AUTH* App 4 contains detailed *guidance* on those activities.

#### Business loans: application of MCOB

1.2.3 R In relation to a *regulated mortgage contract* for a business purpose:

- (1) *MCOB* applies if the *customer* is not a *large business customer*; and
- (2) if *MCOB* applies, a *firm* must either:
  - (a) comply with *MCOB* in full (disregarding the tailored provisions for *regulated mortgage contracts* for a business purpose in the remainder of *MCOB*); or
  - (b) comply with *MCOB* taking account of those tailored provisions, including *MCOB* 1.2.7R.

- 1.2.4 G *MCOB* 1 Ann 2G contains a table summarising the provisions of *MCOB* that apply to *regulated mortgage contracts* that are for a business purpose. For detail of the tailored provisions applying, see the section on ‘business loans’ set out in each relevant chapter.
- 1.2.5 G (1) In order for a loan to fall within the definition of a *regulated mortgage contract*, at least 40% of the total of the land to be given as security must be used as or in connection with a dwelling. Therefore, the variation in approach provided for in *MCOB* 1.2.3R(2) can only apply where the loan being used for a business purpose is secured against a property at least 40 per cent of which is used as a dwelling. It cannot apply to a loan secured on property that is used solely for a business purpose.
- (2) Whether a *regulated mortgage contract* is for a ‘business purpose’ will be a matter of fact to be determined by a *firm* depending on the individual circumstances of each case. In the *FSA*’s opinion, a *regulated mortgage contract* secured, for example, on the borrower’s own home, but used to finance the purchase of a single buy-to-let property will not be for a business purpose.

- 1.2.6 G In determining whether a *customer* is a *large business customer* for the purposes of *MCOB* 1.2.3R(1), a *firm* will need to have regard to the figure given for the *customer*’s annual turnover in the *customer*’s annual report and accounts or business plan. In addition, a *firm* may rely on information provided by the *customer* about the annual turnover, unless, taking a common-sense view of this information, it has reason to doubt it.

**Business loans: additional requirements if tailored route is used**

- 1.2.7 R In relation to a *regulated mortgage contract* for a business purpose, if a *firm* has opted for the tailored route in *MCOB* 1.2.3R(2), it must adopt the following modifications to the provisions in *MCOB*:
- (1) (except in relation to sections 6 and 8 of any initial disclosure document provided in accordance with *MCOB* 4.4.1R(1)(c)(i) or sections 5 and 8 of any initial disclosure document provided in accordance with *MCOB* 4.4.1R(1)(c)(ii)) substitute an alternative description of the facility provided under the *regulated mortgage contract* for ‘mortgage’ where that term is used in any disclosure;
- (2) substitute the term ‘illustration’ for ‘key facts illustration’ when opting to use the tailored business loans *rules* in *MCOB* 4.9, *MCOB* 5.7, *MCOB* 6.7 or *MCOB* 7.7; and
- (3) limit disclosure to facilities provided under the *regulated mortgage contract*.

- 1.2.8 G (1) *Firms* are reminded of the requirement in *MCOB 2.2.6R* that any communication should be clear, fair and not misleading when substituting an alternative for the term ‘mortgage’ in accordance with *MCOB 1.2.7R(1)*.
- (2) Possible alternatives to the term ‘mortgage’ include, for example, ‘secured business overdraft’, ‘secured loan’ or ‘secured business credit’.
- 1.2.9 G The disclosure *rules* in *MCOB* place particular emphasis on the description of borrowing. Where the *regulated mortgage contract* is for a business purpose, a *firm* should reflect this emphasis in any disclosure by first describing any borrowing before addressing the other facilities provided under *the regulated mortgage contract*.
- Authorised professional firms**
- 1.2.10 R ***MCOB does not apply to an authorised professional firm with respect to its non-mainstream regulated activities except for:***
- (1) ***MCOB 2.2 (Communications);***
- (2) ***MCOB 3 (Financial promotion); and***
- (3) ***MCOB 4.4 (Initial disclosure requirements) but only as regards providing the information contained in section 7 (What to do if you have a complaint) and section 8 (Are we covered by the Financial Services Compensation Scheme?) of MCOB 4 Ann 1R or MCOB 4 Ann 2R, and MCOB 8 Ann 1R or MCOB 8 Ann 2R***
- 1.2.11 G *Authorised professional firms* should be aware of the following:
- (1) *PROF 5* (Non-mainstream regulated activities); and
- (2) *MCOB 3.1.9R* (Authorised professional firms) and the exception in article 55 of the *Financial Promotion Order* (Communications by members of the professions) which applies in relation to *qualifying credit promotions* of *authorised professional firms* under *MCOB 3.2.5R(3)* (Exemptions).
- Pre-contractual arrangements by a mortgage lender**
- 1.2.12 R **In *MCOB* the activities of a mortgage lender which would be arranging but for article 28A of the Regulated Activities Order (Arranging contracts to which the arranger is a party), are to be treated as arranging and therefore also as regulated mortgage activities.**
- 1.2.13 G The effect of article 28A of the *Regulated Activities Order* would normally mean that arrangements made by a party to a *regulated mortgage contract* would not fall within the *regulated mortgage*

*activity of arranging*. So in a direct sale, a *mortgage lender* would not be carrying on the *regulated activity of arranging* but, where the transaction proceeds to completion, would instead be involved in the *regulated activity of entering into a regulated mortgage contract*. However, the provisions in *MCOB* on *arranging regulated mortgage contracts* are applied to pre-contractual arrangements by a *mortgage lender*.

### **Summary of the application of the chapters of MCOB**

1.2.14 G A table summarising the application of the various chapters of *MCOB* to *firms* that carry on *regulated mortgage activities* is set out in *MCOB* 1 Ann 3G. For the detailed application of each chapter, see the application *rule* at the start of that chapter.

### **1.3 General application: where?**

#### **Location of the customer**

1.3.1 R Except as set out in this section, *MCOB* applies if the *customer* of a *firm* carrying on *regulated mortgage activities* is resident in:

- (1) the *United Kingdom*; or
- (2) another *EEA State*, but in this case only if the activity is carried on from an establishment maintained by the *firm* (or its *appointed representative*) in the *United Kingdom*;

at the time that the *regulated mortgage activity* is carried on.

#### **Financial Promotion**

1.3.2 R The territorial scope of *MCOB* 3 (Financial promotion) is set out in *MCOB* 3.3 (Application: where) rather than in this section.

#### **Electronic commerce activities and communications**

1.3.3 R The territorial scope of this sourcebook is modified by *ECO* in relation to *electronic commerce activities* and *electronic commerce communications*.

#### **Distance contracts entered into from an establishment in another EEA state**

- 1.3.4 R
- (1) The *rules* in (2) do not apply to a *firm* with respect to an activity exclusively concerning a *distance contract* if the following conditions are satisfied:
    - (a) the *firm* carries on the activity from an establishment maintained by the *firm* in an *EEA State* other than the *United Kingdom*; and
    - (b) either the *EEA State*:

- (i) has implemented the *DMD*; or
- (ii) has obligations in its domestic law corresponding to those provided for by the *DMD*;

and, in either case, with the result that the obligations provided for by the *DMD* (or corresponding obligations) are applied by that State when the *firm* carries on that activity; and

- (c) the *firm* is a national of an *EEA State* or a company or firm mentioned in article 48 of the *Treaty*.

(2) The *rules* which do not apply are:

- (a) *MCOB 4.4* (Initial disclosure requirements);
- (b) *MCOB 4.5* (Additional disclosure for distance mortgage mediation contracts with retail customers);
- (c) *MCOB 4.6* (Cancellation of distance mortgage mediation contracts);
- (d) *MCOB 5* (Pre-application disclosure);
- (e) *MCOB 6* (Disclosure at offer stage);
- (f) *MCOB 7.6.7R* to *MCOB 7.6.17R* (Further advances);
- (g) *MCOB 8.3* (Application of rules in *MCOB 4*) to the extent that it applies *MCOB 4.4* to *MCOB 4.6*;
- (h) *MCOB 8.4* (Initial disclosure requirements: home reversion schemes);
- (i) *MCOB 9.3* (Pre-application disclosure);
- (j) *MCOB 9.4* (Content of illustrations); and
- (k) *MCOB 9.5* (Disclosure at offer stage for lifetime mortgages).

#### **Distance contracts with retail customers**

1.3.5 G Parts of *MCOB* relate to *distance contracts* (or *distance mortgage mediation contracts*) with *retail customers*. These expressions are derived from the *Distance Marketing Directive*, and the following paragraphs provide some *guidance* to *firms* on their meaning:

- (1) *Retail customer*



The *Distance Marketing Directive* applies for *distance contracts* with ‘any natural person who ... is acting for purposes which are outside his trade, business or profession’, for which the term ‘*retail customer*’ has been adopted. Examples of individuals who would be regarded as *retail customers* include:

- (a) personal representatives, including executors, unless they are acting in a professional capacity, for example a solicitor acting as executor; or
- (b) private individuals acting in personal or other family circumstances, for example, a trustee of a family trust.

(2) *Distance contract*

To be a *distance contract*, a contract must be concluded under an ‘organised distance sales or service-provision scheme’ run by the contractual provider of the service who, for the purpose of the contract, makes exclusive use (directly or through an intermediary) of one or more *means of distance communication* up to and including the time at which the contract is concluded. So:

- (a) the *firm* must have put in place facilities designed to enable a *customer* to deal with it exclusively at a distance, such as facilities for a *customer* to deal with it purely by post, telephone, fax or the Internet. If a *firm* normally operates face-to-face and has no facilities in place enabling a *customer* to deal with it customarily by distance means, the *DMD* will not apply. A one-off transaction effected exclusively by distance means to meet a particular contingency or emergency will not be a *distance contract*;
- (b) there must have been no simultaneous physical presence of the *firm* and the other party to the contract throughout the offer, negotiation and conclusion of the contract. So, for example, contracts offered, negotiated and concluded over the Internet, through a telemarketing operation, or by post will normally be *distance contracts*.

**Use of intermediaries**

- 1.3.6 G The mere fact that an intermediary (acting for the supplier or for the *retail customer*) is involved, does not make the sale of a financial product or service a *distance contract*. There will not be a *distance contract* if there has been simultaneous physical presence of the intermediary and the *retail customer* at some stage in the offer, negotiation and conclusion of the contract, which has been meaningful in terms of the contract which ensues.

- 1.4 Application of the Handbook in relation to mortgages**
- 1.4.1 G A table summarising the application of the *Handbook* to *firms* carrying on *regulated mortgage activities* is set out in *MCOB* 1 Ann 4G. For the detailed application of each module, see the application provision at the start of the module, and each chapter or section.
- 1.5 Application to appointed representatives**
- 1.5.1 G (1) Although *MCOB* does not apply directly to a *firm's appointed representatives*, a *firm* will always be responsible for the acts and omissions of its *appointed representatives* in carrying on business for which the *firm* has accepted responsibility (section 39(3) of the *Act*). In determining whether a *firm* has complied with any provision of *MCOB*, anything done or omitted by a *firm's appointed representative* (when acting as such) will be treated as having been done or omitted by the *firm* (section 39(4) of the *Act*).
- (2) *Firms* should refer to *SUP* 12 (Appointed representatives), which sets out requirements which apply to *firms* using *appointed representatives*.
- 1.6 Application in relation to the Consumer Credit Act 1974**
- 1.6.1 G *MCOB* applies to *regulated mortgage contracts* entered into after 31 October 2004. Variations made after that date to contracts entered into before that date are not subject to *FSA* regulation but may be subject to the Consumer Credit Act 1974. *AUTH* App 4.4.13G contains *guidance* on the variation of contracts entered into before 31 October 2004.
- 1.6.2 G *Principle 2* requires a *firm* to conduct its business with due skill, care and diligence. The purpose of *MCOB* 1.6.3R is to reinforce this. The *FSA* would expect *firms* to take appropriate steps to determine whether any mortgage it proposes to enter into is subject to *FSA* regulation.
- 1.6.3 R **Before a *firm* enters into a mortgage, it must take all reasonable steps to establish whether that mortgage will be a *regulated mortgage contract* and therefore subject to *MCOB*.**
- 1.6.4 R **If, notwithstanding the steps taken by a *firm* to comply with *MCOB* 1.6.3R, it transpires that a mortgage which the *firm* has treated as unregulated is in fact a *regulated mortgage contract*, the *firm* must as soon as practicable after the correct status of the mortgage has been established:**
- (1) **contact the *customer* and provide him with the following information in a *durable medium*:**
- (a) **a statement that the mortgage contract is a *regulated mortgage contract* subject to *FSA* regulation, stating**

**in particular the position with regard to redress and compensation; and**

**(b) (where relevant) a statement that the Consumer Credit Act 1974 will not apply to the mortgage contract and that any Consumer Credit Act rights or requirements set out in previous communications will not apply;**

**(2) apply to the *regulated mortgage contract* all relevant *MCOB* requirements, such as those on disclosure (in *MCOB 7*) or on the treatment of *customers in arrears* (in *MCOB 13*).**

1.6.5

G

- (1) *MCOB 1.6.4R(2)* means, for example, that if a *firm* discovered immediately after completion that a loan was a *regulated mortgage contract*, the *firm* would be required to comply with *MCOB 7.4* (Disclosure at the start of the contract).
- (2) Although *MCOB 1.6.4R* recognises that *firms* may become aware that a mortgage is a *regulated mortgage contract* at a late stage, the *FSA* expects this to be an extremely rare occurrence. It could arise, for example, if a *firm* has acted on the understanding, verified as far as was practicable, that in respect of a particular mortgage contract less than 40% of the land would be used in connection with a dwelling. If it was discovered later that more than 40 % of the land was used in connection with the dwelling (and provided that all the other legal requirements were met) the mortgage will be a *regulated mortgage contract* to which *MCOB* applies.
- (3) *MCOB 1.6.3R* and *MCOB 1.6.4R* do not override the application of *MCOB* to any *regulated mortgage contract*. *MCOB* applies notwithstanding a *firm's* genuine belief that a mortgage is unregulated. In deciding whether to take disciplinary action as a result of a breach of *MCOB*, the *FSA* will take into account whether the action by the *firm* was reckless or deliberate (see *ENF 11.4.1R(1)(a)*).

## MCOB 1: Application and purpose

### Annex 1 G

#### Summary of firm types and of the regulated mortgage activities

##### 1 Table

This annex belongs to *MCOB 1.2.2G* and summarises the four *firm* types which are used in *MCOB*, the *regulated mortgage activities* which they carry on, what those activities cover and what is excluded. (See *AUTH* App 4 for detailed *guidance on regulated mortgage activities*.) References to articles are to articles of the *Regulated Activities Order*.

##### 2 Table

The exclusions listed in this table are only a summary of the exclusions in the *Regulated Activities Order*. This summary is not a complete explanation of the exclusions and should not be relied on as if it were.

Type of firm	Regulated activity	Description of activity	Summary of exclusions
<i>mortgage lender</i>	<i>entering into a regulated mortgage contract as lender</i> (article 61(1) (Regulated mortgage contracts)).	the provision of credit (which includes a cash loan or any other form of financial accommodation) to an individual or trustee under a <i>regulated mortgage contract</i> .	unless:  (1) the <i>person</i> providing credit is acting in the capacity of trustee or personal representative (article 66). See <i>AUTH</i> App 4.10.5G – 4.10.8G; or  (2) both the lender and borrower are overseas ( <i>AUTH</i> App 4.11 (Link between activities and the United Kingdom)).
<i>mortgage administrator</i>	<i>administering a regulated mortgage contract</i> where that contract is entered into after 31 October 2004 (article 61(2) (Regulated mortgage contracts)).	(1) notifying the borrower of changes in interest rates or payments due under the contract, or of other matters of which the contract requires him to be notified; or  (2) taking any necessary steps for the purposes of collecting or receiving payments due under the contract from the borrower	unless:  (1) the <i>person</i> arranges for a <i>mortgage administrator</i> to administer the contract (article 62); or  (2) the <i>person</i> administers the contract for a period of not more than one <i>month</i> after the arrangement in (1) has come to an end (article 62); or  (3) the <i>person</i> administers the contract under an agreement with a <i>mortgage administrator</i> (article 63); or  (4) the <i>person</i> administering the contract is acting in the capacity of trustee or

			<p>personal representative (article 66). See <i>AUTH</i> App 4.10.5G – 4.10.8G; or</p> <p>(5) both the administrator and borrower are overseas (<i>AUTH</i> App 4.11 (Link between activities and the United Kingdom)).</p>
<i>mortgage adviser</i>	<i>advising on regulated mortgage contracts</i> (article 53A (Advising on regulated mortgage contracts)).	<p>giving <i>advice</i> to a <i>person</i> in his capacity as borrower or potential borrower on the merits of doing any of the following:</p> <p>(1) entering into a particular <i>regulated mortgage contract</i>; or</p> <p>(2) varying the terms of a <i>regulated mortgage contract</i> entered into after 31 October 2004 in such a way as to vary the borrower's obligations under the contract (see <i>AUTH</i> App 4.6 (Advising on regulated mortgage contracts)).</p>	<p>unless:</p> <p>(1) the advice is given in a periodical publication, regularly updated news and information service or broadcast (article 54); see <i>AUTH</i> 7 (Periodical publications, news services and broadcasts: applications for certification); or</p> <p>(2) the advice is given in the course of administration of the contract by an <i>authorised person</i> (article 54A); or</p> <p>(3) the <i>advice</i> is given by a <i>person</i> carrying on a profession or business (other than a <i>regulated activity</i>) (article 67). See <i>AUTH</i> App 4.10 (Exclusions applying to more than one regulated activity); or</p> <p>(4) the <i>person</i> giving the advice is acting in the capacity of trustee or personal representative (article 66). See <i>AUTH</i> App 4.10.5G-4.10.8G.</p>

<p><i>mortgage arranger</i></p>	<p>(1) making arrangements for another <i>person</i> to</p> <p>(a) <i>enter into a regulated mortgage contract</i> as borrower; or</p> <p>(b) vary the terms of a <i>regulated mortgage contract</i> entered into by him as borrower after 31 October 2004 in such a way as to vary his obligations under the contract (article 25A(1)).</p>	<p>(1) making arrangements which bring about, or would bring about:</p> <p>(a) the <i>entering into</i> of a <i>regulated mortgage contract</i>; or</p> <p>(b) the variation of the terms of a <i>regulated mortgage contract</i> entered into after 31 October 2004,</p> <p>for example brokers making arrangements on behalf of a borrower which go beyond merely introducing. See <i>AUTH</i> App 4.5.2G.</p>	<p>unless:</p> <p>(1) the <i>person</i> making the arrangements is to be a party to the <i>regulated mortgage contract</i> (article 28A) (but a <i>mortgage lender</i> is treated as a <i>mortgage arranger</i> for the purposes of <i>MCOB</i>: see <i>MCOB</i> 1.2.12R); or</p> <p>(2) the arrangements do not bring about or would not bring about the <i>regulated mortgage contract</i> in question (article 26); or</p> <p>(3) the arrangements are made between a borrower and an <i>authorised person</i> by an <i>unauthorised person</i> if specified conditions as to advice and remuneration are satisfied (article 29) (see <i>AUTH</i> App 4.5.8G); or</p> <p>(4) the arrangements are made in the course of administration by an <i>authorised person</i> (article 29A); or</p> <p>(5) the arrangements are made by a <i>person</i> in the course of carrying on a profession or business (other than a <i>regulated activity</i>) (see <i>AUTH</i> App 4.10) (Exclusions applying to more than one regulated activity); or</p> <p>(6) where the arranger and borrower are overseas (<i>AUTH</i> App 4.11 (Link between activities and the United Kingdom)).</p>
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<p>(2) making arrangements with a view to a person who participates in the arrangements entering into a <i>regulated mortgage contract</i> as borrower (article 25A(2)).</p>	<p>(2) making arrangements with a view to a person participating in those arrangements entering into a <i>regulated mortgage contract</i> (for example introducing potential borrowers to brokers or lenders). See <i>AUTH</i> App 4.5.3G.</p>	<p>(2) – (6) also apply and, in addition:</p> <p>(1) arrangements under which a borrower is introduced to a <i>mortgage arranger</i>, a <i>mortgage adviser</i> or <i>mortgage lender</i> (which will include <i>overseas firms</i>) or an <i>appointed representative</i> who is appointed to <i>arrange</i> or <i>advise on a regulated mortgage contract</i> (article 33A). (See <i>AUTH</i> App 4.5.10G – 4.5.18G); or</p> <p>(2) where the arrangements simply enable the parties to communicate with one another (for example internet service providers or telecommunication networks) (article 27).</p>
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## **MCOB 1: Application and purpose**

### **Annex 2G**

#### **Summary of the tailored provisions in MCOB that apply to regulated mortgage contracts that are for a business purpose and are not with large business customers**

1 Table

This annex belongs to *MCOB 1.2.4G*

2 Table

<b>Chapter</b>	<b>Tailored provisions of <i>MCOB</i> that apply to <i>regulated mortgage contracts</i> that are for a business purpose</b>
<i>MCOB 1</i> (Application and purpose)	<i>MCOB 1.2.3R</i> to <i>MCOB 1.2.9G</i> (Business loans: application of <i>MCOB</i> )
<i>MCOB 2</i> (Conduct of business standards: general)	None
<i>MCOB 3</i> (Financial promotion)	None
<i>MCOB 4</i> (Advising and selling standards)	<i>MCOB 4.9</i> (Business loans)
<i>MCOB 5</i> (Pre-application disclosure)	<i>MCOB 5.7</i> (Business loans)
<i>MCOB 6</i> (Disclosure at the offer stage)	<i>MCOB 6.7</i> (Business loans)
<i>MCOB 7</i> (Disclosure at start of contract and after sale)	<i>MCOB 7.7</i> (Business loans)
<i>MCOB 8</i> (Lifetime mortgages: advising and selling standards)	None
<i>MCOB 9</i> (Lifetime mortgages: product disclosure)	None
<i>MCOB 10</i> (Annual percentage rate)	None
<i>MCOB 11</i> (Responsible lending)	None
<i>MCOB 12</i> (Charges)	<i>MCOB 12.6</i> (Business loans)
<i>MCOB 13</i> (Arrears and repossessions)	<i>MCOB 13.7</i> (Business loans)



## MCOB 1: Application and purpose

### Annex 3 G

#### Summary of the application of the chapters of MCOB

##### 1 Table

This annex belongs to *MCOB 1.2.8G* and summarises the application of the various chapters of *MCOB* to *firms* that carry on *regulated mortgage activities* and *firms* that *communicate* or *approve qualifying credit promotions*. For the detailed application of each chapter, see the *application rule* at the start of that chapter.

##### 2 Table

Chapter	Who does the chapter apply to?
<i>MCOB 2</i> (Conduct of business standards: general)	<p>(1) The whole chapter applies to a <i>mortgage lender</i>; a <i>mortgage administrator</i>; a <i>mortgage adviser</i> and a <i>mortgage arranger</i> when it carries on a <i>regulated mortgage activity</i>;</p> <p>(2) <i>MCOB 2.5</i>, <i>MCOB 2.6</i>, <i>MCOB 2.7</i>, and <i>MCOB 2.8</i> apply to a <i>firm</i> that <i>communicates</i> or <i>approves a qualifying credit promotion</i>.</p>
<i>MCOB 3</i> (Financial promotion)	The whole chapter applies to a <i>firm</i> when it <i>communicates</i> or <i>approves a qualifying credit promotion</i>
<i>MCOB 4</i> (Advising and selling standards)	<p>The whole chapter applies to a <i>mortgage adviser</i>; the whole chapter except for <i>MCOB 4.6</i> and <i>MCOB 4.7</i> applies to a <i>mortgage lender</i> and the whole chapter except for <i>MCOB 4.7</i> applies to a <i>mortgage arranger</i>.</p> <p>The application of <i>MCOB 4</i> for a <i>regulated lifetime mortgage contract</i> is replaced by <i>MCOB 8</i> (Lifetime mortgages: advising and selling standards).</p>
<i>MCOB 5</i> (Pre-application disclosure)	<p>The whole chapter applies to a <i>mortgage lender</i>; <i>mortgage administrator</i>; <i>mortgage adviser</i> and <i>mortgage arranger</i>, when it:</p> <ol style="list-style-type: none"> <li>(1) makes a <i>personal recommendation</i> about a particular mortgage to a <i>customer</i>; or</li> <li>(2) provides information to a <i>customer</i> that is specific to the amount that the <i>customer</i> wants to borrow on a particular <i>regulated mortgage contract</i>, including information provided in response to a request from a <i>customer</i>; or</li> <li>(3) provides the means for a <i>customer</i> to make an application to it;</li> </ol> <p>in connection with <i>entering into</i> or varying a <i>regulated mortgage contract</i> provided by a <i>mortgage lender</i>.</p>

Chapter	Who does the chapter apply to?
	<p>The application of <i>MCOB 5</i> for a <i>regulated lifetime mortgage contract</i> is replaced by <i>MCOB 9</i> (Lifetime mortgages: product disclosure).</p> <p>The application of <i>MCOB 5</i> for the variation of a <i>regulated mortgage contract</i> is replaced by <i>MCOB 7</i> (Disclosure at start of contract and after sale).</p>
<i>MCOB 6</i> (Disclosure at the offer stage)	<p>The whole chapter applies to a <i>mortgage lender</i> when it makes an <i>offer</i> to a <i>customer</i> with a view to <i>entering into a regulated mortgage contract</i> or to varying an <i>existing regulated mortgage contract</i> by adding or removing a party, making a further advance or switching all or part of the <i>regulated mortgage contract</i> from one type of interest rate to another.</p> <p>In relation to <i>regulated lifetime mortgage contracts</i>, <i>MCOB 6</i> is replaced by <i>MCOB 9</i> (Lifetime mortgages: product disclosure).</p>
<i>MCOB 7</i> (Disclosure at start of contract and after sale)	<p>(1) The whole chapter applies to a <i>mortgage lender</i>;</p> <p>(2) <i>MCOB 7.1 – MCOB 7.3.3</i> and <i>MCOB 7.5 – MCOB 7.7.4G</i> apply to a <i>mortgage administrator</i>;</p> <p>(3) <i>MCOB 7.1 – MCOB 7.3.3R</i> and <i>MCOB 7.6.7R – MCOB 7.7.4G</i> apply to a <i>mortgage adviser</i>; and</p> <p>(4) <i>MCOB 7.1 – MCOB 7.3.3R</i> and <i>MCOB 7.6.7R – MCOB 7.7.4G</i> apply to a <i>mortgage arranger</i>;</p> <p>In relation to <i>regulated lifetime mortgage contracts</i>, <i>MCOB 7</i> is replaced by <i>MCOB 9</i> (Lifetime mortgages: product disclosure).</p>
<i>MCOB 8</i> (Lifetime mortgages: advising and selling standards)	<p>The whole chapter except for <i>MCOB 8.5</i> applies to a <i>mortgage lender</i>;</p> <p>The whole chapter applies to a <i>mortgage adviser</i>;</p> <p>The whole chapter except for <i>MCOB 8.5</i> applies to a <i>mortgage arranger</i>.</p>
<i>MCOB 9</i> (Lifetime mortgages: product disclosure)	<p><i>MCOB 9.1-9.7</i> applies to a <i>mortgage lender</i>;</p> <p><i>MCOB 9.1-9.4</i> and <i>MCOB 9.8</i> apply to a <i>mortgage administrator</i>;</p> <p><i>MCOB 9.1-9.4</i> applies to a <i>mortgage adviser</i></p> <p><i>MCOB 9.1-9.4</i> applies to a <i>mortgage arranger</i>.</p>
<i>MCOB 10</i> (Annual percentage rate)	<p>The whole chapter applies to a <i>firm</i> which, under <i>rules</i> elsewhere in <i>MCOB</i>, is required to calculate an <i>annual percentage rate of charge (APR)</i>.</p>
<i>MCOB 11</i> (Responsible lending)	<p>The whole chapter applies to a <i>mortgage lender</i> when it</p>

Chapter	Who does the chapter apply to?
	<i>enters into</i> or makes a further advance on a <i>regulated mortgage contract</i> with a <i>customer</i> .
MCOB 12 (Charges)	<p>(1) The whole chapter applies to a <i>mortgage lender</i> when it carries on a <i>regulated mortgage activity</i>;</p> <p>(2) MCOB 12.1, MCOB 12.2 and MCOB 12.5.2R apply to a <i>mortgage adviser</i> and a <i>mortgage arranger</i>;</p> <p>(3) MCOB 12.1, MCOB 12.2, MCOB 12.4 and MCOB 12.5.2R apply to a <i>mortgage administrator</i> and a <i>firm</i> that was a <i>mortgage lender</i> or <i>mortgage administrator</i> before the sale of a <i>repossessed property</i>.</p>
MCOB 13 (Arrears and repossessions)	<p>(1) The whole chapter applies to a <i>mortgage administrator</i> and a <i>firm</i> that was the <i>mortgage administrator</i> before the sale of a <i>repossessed property</i>.</p> <p>(2) MCOB 13.1-13.3 (except MCOB 13.3.9R and MCOB 13.3.10G) apply to a <i>mortgage lender</i> and a <i>firm</i> that was the <i>mortgage lender</i> before the sale of a <i>repossessed property</i></p>

## MCOB 1: Application and purpose

### Annex 4G

#### Summary of the application of the Handbook to firms carrying on regulated mortgage activities and firms that communicate or approve qualifying credit promotions

- 1 Table
- 2 This table belongs to *MCOB 1.4.1G*

[Note: Handbook modules marked with an asterisk will be amended to take account of the introduction of mortgage regulation. The relevant amendments will take effect on 31 October 2004].

	Module	Application
High Level Standards	General provisions, <i>GEN</i> [*]	Applies (at least in part) to every <i>mortgage adviser, mortgage administrator, mortgage arranger</i> and <i>mortgage lender</i> ; and also to every <i>firm</i> which <i>communicates</i> or <i>approves qualifying credit promotions</i> .
	Principles for Businesses, <i>PRIN</i>	
	Threshold Conditions, <i>COND</i>	
	Statements of Principle and Code of Practice for Approved Persons, <i>APER</i>	Applies to every <i>approved person</i> who performs a <i>controlled function</i> under an <i>arrangement</i> entered into by a <i>mortgage administrator, mortgage adviser, mortgage arranger</i> or <i>mortgage lender</i> ; or by a <i>firm</i> which <i>communicates</i> or <i>approves qualifying credit promotions</i> .
	The Fit and Proper test for Approved Persons, <i>FIT</i>	Applies to every <i>firm</i> including <i>mortgage administrator, mortgage adviser, mortgage arranger</i> and <i>mortgage lender</i> in respect of any application that it makes for the approval of a <i>person</i> to perform a <i>controlled function</i> .
	Senior management arrangements, Systems and Controls, <i>SYSC</i>	Applies to every <i>mortgage administrator, mortgage adviser, mortgage arranger</i> and <i>mortgage lender</i> and also to <i>firms</i> which <i>communicate</i> or <i>approve qualifying credit promotions</i> .

Business Standards	Interim Prudential Sourcebooks,	
	<i>IPRU (BANK)</i>	<ul style="list-style-type: none"> <li>▪ Applies to every <i>mortgage administrator, mortgage adviser, mortgage arranger and mortgage lender</i> where they are also banks;</li> </ul>
	<i>IPRU (BSOC)</i>	<ul style="list-style-type: none"> <li>• Applies to every <i>mortgage administrator, mortgage adviser, mortgage arranger and mortgage lender</i> where they are also building societies;</li> </ul>
	<i>IPRU (FSOC)</i>	<ul style="list-style-type: none"> <li>• Applies to every <i>mortgage administrator, mortgage adviser, mortgage arranger and mortgage lender</i> where they are also friendly societies;</li> </ul>
	<i>IPRU (INS)</i>	<ul style="list-style-type: none"> <li>• Applies to every <i>mortgage administrator, mortgage adviser, mortgage arranger and mortgage lender</i> where they are also insurers;</li> </ul>
	<i>IPRU (INV)</i>	<ul style="list-style-type: none"> <li>• Applies to every <i>mortgage administrator, mortgage adviser, mortgage arranger and mortgage lender</i> where they are also <i>investment firms</i>;</li> </ul>
	<i>[PRU 9.2]</i>	<ul style="list-style-type: none"> <li>• <i>[Applies to mortgage adviser and mortgage arranger where they are also a firm carrying on insurance mediation activities.]</i></li> </ul>
	<i>[PRU 9.3]</i>	<ul style="list-style-type: none"> <li>▪ <i>[Applies to mortgage adviser, mortgage administrator, mortgage arranger and mortgage lender where they are also a firm carrying on insurance mediation activities.]</i></li> </ul>
	<i>[PRU 9.4]</i>	<ul style="list-style-type: none"> <li>▪ <i>[Applies to mortgage adviser and mortgage arranger where they are also a firm carrying on insurance mediation activities.]</i></li> </ul>

Market conduct, <i>MAR</i>	<p>Does not apply to a <i>mortgage administrator, mortgage adviser, mortgage arranger or mortgage lender</i> when <i>entering into or administering regulated mortgage contracts</i>, or when <i>communicating or approving qualifying credit promotions</i>. However, certain chapters of <i>MAR</i> apply to any such <i>firm</i> if:</p> <p>(a) it also engages in <i>behaviour</i> in relation to <i>qualifying investments</i> traded on <i>prescribed markets</i> then <i>MAR 1</i> applies;</p> <p>(b) it undertakes or is concerned with offers of securities that may involve price stabilising activity then <i>MAR 2</i> applies;</p> <p>(c) it carries on <i>inter-professional business</i> - then <i>MAR 3</i> applies;</p> <p>(d) it carries on <i>designated investment business</i> - then <i>MAR 4</i> applies.</p>
Conduct of Business sourcebook, <i>COB</i> [*]	<p>Does not apply to a <i>firm</i> when <i>entering into or administering a regulated mortgage contract</i>, or when <i>communicating or approving qualifying credit promotions</i>. However, <i>COB</i> may apply to any such <i>firm</i> if it also carries on any other <i>regulated activity</i> and/or <i>communicates or approves financial promotions</i> not relating to <i>qualifying credit</i>. The requirements of <i>COB 3 (Financial Promotion)</i> do not apply to <i>qualifying credit promotions</i>.</p>
Training and Competence sourcebook, <i>TC</i> [*]	<p><i>TC1</i> applies when a <i>firm</i> <i>advises on, arranges, enters into or administers regulated mortgage contracts</i> or when it <i>communicates or approves qualifying credit promotions</i>. <i>TC2</i> applies only in circumstances where a <i>firm</i> has <i>employees</i> engaging in or overseeing other activities – as listed in <i>TC 2.1.4R</i>.</p>
Money Laundering sourcebook, <i>ML</i> [*]	<p>Applies to every <i>mortgage administrator</i> and <i>mortgage lender</i>. This includes in circumstances where the <i>mortgage administrator</i> is appointed by a <i>person</i> who is not an <i>authorised person</i> to administer <i>regulated mortgage contracts</i> on its behalf.</p>
Client asset sourcebook, <i>CASS</i>	<p>Does not apply to mortgage <i>firms</i>.</p>

Regulatory processes	<p>Authorisation manual, <i>AUTH</i> [*]</p>	<p>Applies to:</p> <ol style="list-style-type: none"> <li>(1) a <i>person</i>, other than an <i>authorised person</i>, considering carrying on the <i>regulated activities</i> of <i>mortgage administrator, mortgage adviser, mortgage arranger and mortgage lender</i> in the <i>United Kingdom</i>, and who require <i>guidance</i> on whether <i>authorisation</i> is required and, if so, how to apply to the <i>FSA</i> for <i>Part IV permission</i>;</li> <li>(2) an <i>EEA firm</i> or a <i>Treaty firm</i> that wishes to establish a <i>branch</i> or provide <i>cross border services</i> into the <i>United Kingdom</i> in relation to <i>mortgage lending</i> or wishes to apply for a <i>top-up permission</i> that includes <i>mortgage lending</i>;</li> <li>(3) a <i>person</i> wishing to obtain approval for <i>persons performing controlled functions</i> in relation to <i>mortgage lending</i> and in conjunction with an application for <i>Part IV permission</i>; and</li> <li>(4) a <i>person</i> wishing to understand how the <i>FSA</i> will use its powers in relation to <i>authorisation</i> to determine applications.</li> </ol>
	<p>Supervision manual, <i>SUP</i> [*]</p>	<p>The following chapters of <i>SUP</i> apply to every <i>mortgage administrator, mortgage adviser, mortgage arranger and mortgage lender</i>, and also to <i>firms</i> which <i>communicate</i> or <i>approve qualifying credit promotions</i>: 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 15, 16, 20.</p> <p>The following chapters of <i>SUP</i> do not apply to a <i>mortgage administrator, mortgage adviser, mortgage arranger and mortgage lender</i>; or to a <i>firm</i> which <i>communicates</i> or <i>approves qualifying credit promotions</i> unless it carries on other activities: 4, 12, 13, 14, 17, 18, 19</p>
	<p>Enforcement manual, <i>ENF</i> [*]</p>	<p>Potentially relevant for every <i>mortgage administrator, mortgage adviser, mortgage arranger and mortgage lender</i> and <i>firms</i> which <i>communicate</i> or <i>approve qualifying credit promotions</i> and gives guidance on the use of <i>FSA</i>'s enforcement powers.</p>

	Decision making manual, <i>DEC</i>	Potentially relevant for every <i>mortgage administrator, mortgage adviser, mortgage arranger and mortgage lender</i> and <i>firms which communicate or approve qualifying credit promotions</i> and gives guidance on the use of <i>FSAs</i> enforcement powers.
Redress	Dispute Resolution: Complaints, <i>DISP</i> [*]	Applies to every <i>mortgage administrator, mortgage adviser, mortgage arranger and mortgage lender</i> ; and also to <i>firms which communicate or approve qualifying credit promotions</i> .
	Compensation, <i>COMP</i> [*]	The <i>regulated mortgage activities</i> which are covered by the <i>compensation scheme</i> are:  (1) <i>advising on</i> , or  (2) <i>arranging regulated mortgage contracts</i> ; or  (3) <i>agreeing to carry on the regulated activities</i> in (1) to (2) ; or  (4) the activities of a <i>mortgage lender</i> which would be <i>arranging</i> but for article 28A of the <i>Regulated Activities Order</i> (Arranging contracts to which the arranger is a party).
Specialist sourcebooks	Credit unions, <i>CRED</i>	Applies to every <i>mortgage administrator, mortgage lender</i> , and to <i>firms that communicate or approve qualifying credit promotions</i> where they are <i>credit unions</i> and have a <i>Part IV permission to accept deposits</i> .
	Electronic Commerce Directive, <i>ECO</i> [*]	Applies to a <i>firm</i> which carries on an <i>electronic commerce activity</i> .
	Electronic money, <i>ELM</i> [*]	Applies to every <i>firm</i> that issues <i>E- money</i> .
	Professional firms, <i>PROF</i> [*]	Applies to every <i>mortgage administrator, mortgage adviser, mortgage arranger and mortgage lender</i> and to <i>firms that communicate or approve qualifying credit promotions</i> where they are <i>professional firms</i> .
	Lloyd's sourcebook. <i>LLD</i>	Applies only to the <i>Society</i> but some requirements are relevant to <i>mortgage administrator, mortgage adviser, mortgage arranger and mortgage lender</i>  and to <i>firms that communicate or approve qualifying credit promotions</i> where they are also <i>underwriting agents</i> .



	Collective Investment Scheme sourcebook, <i>CIS</i>	Applies to every <i>mortgage administrator, mortgage adviser, mortgage arranger and mortgage lender</i> and to <i>firms that communicate or approve qualifying credit promotions</i> where they are also an <i>operator</i> or a <i>depository</i> of an <i>ICVC</i> or certain other <i>Collective Investment Schemes</i> .
	Recognised Investment Exchanges and Recognised Clearing Houses, <i>REC</i>	Does not apply to <i>mortgage administrator, mortgage adviser, mortgage arranger and mortgage lender</i> , or to <i>firms that communicate or approve qualifying credit promotions</i> .

## 2 CONDUCT OF BUSINESS STANDARDS: GENERAL

2.1 Application:

Who?

2.1.1 R This chapter applies to a *firm* in a category listed in column (1) of the table in *MCOB 2.1.2R* in accordance with column (2) of that table.

2.1.2 R Table

This table belongs to *MCOB 2.1.1R*

(1) Category of firm	(2) Applicable section
<i>mortgage lender</i> <i>mortgage administrator</i> <i>mortgage adviser</i> <i>mortgage arranger</i>	whole chapter
a <i>firm</i> that <i>communicates</i> or <i>approves</i> a <i>qualifying credit promotion</i>	<i>MCOB 2.5, 2.6, 2.7 and 2.8</i>

What?

2.1.3 R This chapter applies in relation to:

- (1) *regulated mortgage activities*;
- (2) those activities in *MCOB 12* and *MCOB 13* that are carried on after a *regulated mortgage contract* has come to an end following the sale of a *repossessed* property; and
- (3) the *communication* or *approval* of a *qualifying credit promotion*.

2.2 Communications

Purpose

2.2.1 G The purpose of *MCOB 2.2* is to restate, in slightly amended form, and as a separate *rule*, the part of *Principle 7* (Communications with clients) that relates to communication of information. This enables a *customer*, who is a *private person*, to bring an action for damages under section 150 (Contravention of rules) of the *Act* to recover loss resulting from a *firm* that carries on the activities referred to in *MCOB 2.1.3R* communicating information, in the course of those activities, in

a way that is not clear or fair, or that is misleading. *MCOB 2.2* also clarifies the expectations of the *FSA* where any *rule* requires the provision of information and there are two or more *customers*.

### **General**

- 2.2.2 G In many circumstances there will be two or more *customers* under any *regulated mortgage contract*, or two or more prospective *customers* looking to enter into the same *regulated mortgage contract*. In such circumstances, where a *rule* in *MCOB* requires the provision of information to such *customers* and the *customers* have different addresses, a *firm* sending out this information should send it to each address. If the *customers* share the same address it will be sufficient to send a single copy of the information addressed to each of the *customers*.

### **Prescribed terms**

- 2.2.3 R **In any communication to a *customer*, a *firm* must:**
- (1) describe any *early repayment charge* as an ‘early repayment charge’ and not use any other expression to describe such charges;
  - (2) describe any *higher lending charge* as a ‘higher lending charge’ and not use any other expression to describe such charges; and
  - (3) describe any *regulated lifetime mortgage contract* as a ‘lifetime mortgage’ and not use any other expression to describe such a mortgage or omit that description from the name given to any product that meets the definition.

### **‘Key facts’ logo**

- 2.2.4 R **In *MCOB*, a *firm* must only use the ‘key facts’ logo where it is required by a *rule*.**

### **Related investment advice**

- 2.2.5 G *Firms* are reminded that they should follow the relevant rules in *COB 5* and *COB 6* relating to advice and disclosure on *investments* if they are *advising* the *customer* on an *investment* (such as an *ISA*) as a *repayment vehicle*.

### **Clear, fair and not misleading communications**

- 2.2.6 R (1) **When a *firm* communicates information to a *customer*, it must take reasonable steps to communicate in a way that is clear, fair and not misleading.**

- (2) Paragraph (1) does not apply to a *firm* when it communicates a *qualifying credit promotion* in circumstances in which *MCOB 3 (Financial promotion)* applies to the *firm*.
- 2.2.7 G When considering how to comply with the requirements of *MCOB 2.2.6R*, a *firm* should have regard to the *customer's* knowledge of the *regulated mortgage contract* to which the information relates.
- 2.2.8 G *MCOB 2.2.6R* covers all communications with *customers*, for example any oral or written statements, telephone calls and any correspondence which is not a *qualifying credit promotion* to which *MCOB 3 (Financial promotion)* applies. In respect of *qualifying credit promotions*, *firms* should note the separate requirements of *MCOB 3*.
- 2.2.9 G Prominence of relevant information can play a key role in ensuring that a communication is clear, fair and not misleading. Where this is the case, the *firm* should consider prominence in the context of the communication as a whole. Use can be made of the positioning of text, background and text colour and type size to ensure that specified information meets the requirements of *MCOB*.
- 2.3 Inducements**
- Purpose**
- 2.3.1 G *Principles 1 and 6* require a *firm* to conduct its business with integrity, to pay due regard to the interests of its *customers* and to treat them fairly. The purpose of *MCOB 2.3* is to ensure that a *firm* does not conduct business under arrangements that might give rise to a conflict with its duty to *customers* or to unfair treatment of them.
- Prohibition of inducements**
- 2.3.2 R **A *firm* must take reasonable steps to ensure that it, and any *person* acting on its behalf, does not:**
- (1) offer, give, solicit or accept an inducement; or
- (2) direct or refer any actual or potential business in relation to a *regulated mortgage contract* to another *person* on its own initiative or on the instructions of an *associate*;
- if it is likely to conflict to a material extent with any duty that the *firm* owes to its *customers* in connection with a *regulated mortgage contract* or any duty which such a recipient *firm* owes to its *customers* in connection with a *regulated mortgage contract*.**
- 2.3.3 G An inducement is a benefit offered with a view to bringing about a particular course of action.

- 2.3.4 G The purpose of *MCOB* 2.3.2R(2) is to prevent the requirement in *MCOB* 2.3.2R(1) being circumvented by an inducement being given or received by an unregulated *associate*. There may be circumstances, however, where a *firm* is able to demonstrate that it could not reasonably have knowledge of an *associate* giving or receiving an inducement. It should not, however, direct business to another *person* on the instruction of an *associate* if this is likely to conflict with the interests of its *customers*.
- 2.3.5 G *MCOB* 2.3.2R does not prevent a *firm*:
- (1) assisting a *mortgage intermediary* so that the quality of the *mortgage intermediary's* service to *customers* is enhanced; or
  - (2) giving or receiving indirect benefits (such as gifts, hospitality and promotional competition prizes);
- providing in either case this is not likely to give rise to a conflict with the duties that the recipient owes to the *customer*. In particular, such benefits should not be of a kind or value that is likely to impair the ability of a *firm* to act in compliance with any *rule* in *MCOB*, for example the suitability requirements in *MCOB* 4.7 (Advised sales).
- 2.3.6 R **A *firm* must not operate a system of giving or offering inducements to a *mortgage intermediary* or any other third party whereby the value of the inducement increases if the *mortgage intermediary* or third party, such as a packager, exceeds a target set for the amount of business referred (for example, a volume override).**
- Quantification of inducements**
- 2.3.7 R (1) **A *mortgage lender* must quantify, in cash terms, any material inducement it offers to a *mortgage intermediary* or a third party.**
- (2) **In quantifying the value of the material inducement, the *firm* must include any subsequent payments (such as a trail fee) made where the *customer* continues with the same regulated *mortgage contract*.**
- 2.3.8 G (1) Quantification of any material inducement offered by the *mortgage lender* supports the disclosure requirements elsewhere in *MCOB*. Further *guidance* on the disclosure of any inducement in cash terms is provided in *MCOB* 5.6.118G.
- (2) A payment made to a third party unconnected with the *mortgage intermediary*, where that payment only reflects the cost of outsourcing work relating to the processing of mortgage applications, would not be considered an inducement in the context of *MCOB* 2.3.7R.

## 2.4 High pressure sales

### Purpose

- 2.4.1 G The purpose of *MCOB 2.4* is to remind *firms* of the relevance of the high level standards in *PRIN*, especially with regard to the use of sales methods that may lead a *customer* to feel pressurised to enter into, or vary, a *regulated mortgage contract*.

### Fair treatment

- 2.4.2 G *Principle 6* (Customers' interests) requires that a *firm* must pay due regard to the interests of its *customers* and treat them fairly. This means, for example, that a *firm* should avoid selling practices that commit *customers* (or lead *customers* to believe that they are committed) to any *regulated mortgage contract* before they have been able to consider the *illustration* and *offer document*. One such practice might be to present a new *customer* with an *illustration*, *offer document* and mortgage deed at one time and to require the mortgage deed to be signed on the same occasion (when there is no urgent need to do so).

### Information

- 2.4.3 G *Principle 7* (Communications with clients) requires that a *firm* must pay due regard to the information needs of its *clients*, and communicate information to them in a way which is clear, fair and not misleading. This means, for example, that a *firm* should avoid giving any *customer* a false impression about the availability of a *regulated mortgage contract*, such as describing it as a 'special offer' not available after a certain date unless this is really the case.

## 2.5 Reliance on others

### Purpose

- 2.5.1 G *Principle 2* requires a *firm* to conduct its business with due skill, care and diligence. *MCOB 2.5* indicates the extent to which *firms* that carry on *regulated mortgage activities* and that *communicate* or *approve* a *qualifying credit promotion* can meet this requirement by relying on others.

### When firms can rely on others

- 2.5.2 R A *firm* will be taken to be in compliance with any *rule* in *MCOB* that requires a *firm* to obtain information to the extent that the *firm* can show that it was reasonable for it to rely on information provided to it by another *person*.

- 2.5.3 E (1) In relying on *MCOB 2.5.2R*, a *firm* should take reasonable steps to establish that the other *person* providing the information is:
- (a) not connected with the *firm*; and
  - (b) competent to provide the information.
- (2) Compliance with (1) may be relied on as tending to establish compliance with *MCOB 2.5.2R*.
- (3) Contravention of (1) may be relied on as tending to establish contravention of *MCOB 2.5.2R*.
- 2.5.4 R (1) Any information which a *rule* in *MCOB* requires to be sent to a *customer* may be sent to another *person* on the instruction of the *customer*, so long as the recipient is not connected with the *firm*.
- (2) There is no need for a *firm* to send information to a *customer* where it has taken reasonable steps to establish that this has been or will be supplied by another *person*.

## 2.6 Exclusion of liability

### Purpose

- 2.6.1 G *Principle 6* (Customers' interests) requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. A *firm* may not exclude the duties it owes or the liabilities it has to a *customer* under the *regulatory system*. It may exclude other duties and liabilities only if it is reasonable for it to do so.

### Limits on the exclusion of liability

- 2.6.2 R A *firm* must not, in any written or oral communication, seek to exclude or restrict, or to rely on any exclusion or restriction of, any duty or liability it may have to a *customer* under the *regulatory system*.
- 2.6.3 R A *firm* must not, in any written or oral communication to a *customer*, seek to exclude or restrict, or to rely on any exclusion or restriction of, any duty or liability not referred to in *MCOB 2.6.2R* unless it is reasonable for it to do so.

## 2.7 Application to electronic media and distance communications

- 2.7.1 G *GEN 2.2.14R* (References to writing) has the effect that electronic media may be used to make communications that are required by the *Handbook* to be 'in writing' unless a contrary intention appears. In *MCOB*, the use of an electronic medium is restricted in certain

circumstances to a *durable medium* as required by the *Distance Marketing Directive*.

**Additional guidance in respect of electronic communication with or for customers**

- 2.7.2 G For any electronic communication with a *customer* in relation to a *regulated mortgage contract*, a *firm* should:
- (1) have in place appropriate arrangements, including contingency plans, to ensure the secure transmission and receipt of the communication; it should also be able to verify the authenticity and integrity of the communication together with the date and time sent and received; the arrangements should be proportionate and take into account the different levels of risk in a *firm*'s business;
  - (2) be able to demonstrate that the *customer* wishes to communicate using this medium; and
  - (3) if entering into an agreement, make it clear to the *customer* that a contractual relationship is created that has legal consequences.

- 2.7.3 G A *firm* should note that *GEN 2.2.14R* (References to writing) does not affect any other legal requirement that may apply in relation to the form or manner of *executing a document* or agreement.

**General provisions related to distance contracts**

- 2.7.4 R **During the course of a *distance contract* with a *retail customer*, the making or performance of which constitutes or is part of a *regulated mortgage contract*:**
- (1) **the *firm* must, at the *retail customer*'s request, provide a paper copy of the contractual terms and conditions of the *regulated mortgage contract* or of the services being provided by the *firm*; and**
  - (2) **the *firm* must comply with the *customer*'s request to change the *means of distance communication* used, unless this is incompatible with the *regulated mortgage contract* or service being provided by the *firm*.**

**2.8 Record keeping**

**Purpose**

- 2.8.1 G *MCOB 2.8* provides details of the standard expected of *firms* where there is an obligation in *MCOB* requiring *firms* to maintain adequate records to evidence compliance. An overall view of the record keeping requirements in *MCOB* is in *MCOB* Schedule 1.



### Accessibility of records

- 2.8.2 R **The records required in *MCOB* must be readily accessible for inspection by the *FSA*.**
- 2.8.3 G A record would be “readily accessible” if it were available for inspection within two *business days* of the request being received.
- 2.8.4 G (1) A *firm* may arrange for records to be kept in such form as it chooses, provided the record is readily accessible for inspection by the *FSA*.
- (2) Where a *firm* chooses to maintain records in electronic form, it should take reasonable steps to ensure that:
- (a) the electronic record accurately reflects the original information; and
  - (b) the electronic record has not been subject to unauthorised or accidental alteration.
- 2.8.5 G Each *rule* in *MCOB* that requires a record also sets out a period that the record must be kept for. While not a requirement of *MCOB*, *firms* may choose to keep records for longer periods, for example, where there is the possibility of *customer* complaint or legal action against the *firm*.

### 3 FINANCIAL PROMOTION

- 3.1                   **Application: who?**
- 3.1.1               **R     This chapter applies to every *firm* which *communicates or approves a qualifying credit promotion*.**
- 3.1.2               G     This chapter applies generally to *firms* in relation to all *qualifying credit promotions*. This wide application is however cut back by *MCOB 3.2* (Application: what?) and *MCOB 3.3* (Application: where?) which limit the application of this chapter for:
- (1)     *qualifying credit promotions* which would fall within the scope of the exemptions in the *Financial Promotion Order* or the additional exemptions set out in *MCOB 3.2.5R* (Applications: what? Exemptions); and
- (2)     *qualifying credit promotions to persons outside the United Kingdom*.
- 3.1.3               G     *MCOB 3.1.1R* means that:
- (1)     this chapter applies not only to *financial promotions* for *regulated mortgage contracts*, but also to *promotions for qualifying credit*; and
- (2)     this chapter applies to all aspects of a promotion by a *firm* of products which combine *unsecured* and *secured lending*.
- 3.1.4               G     In relation to *MCOB 3.1.3G(2)*, an example would be a promotion for a mortgage product, one feature of which was an *unsecured lending* facility or reserve.
- 3.1.5               G     Under section 39(3) of the *Act*, a *firm* is responsible for *financial promotions communicated* by its *appointed representatives* when acting as such.
- 3.1.6               **R     This chapter does not apply to a *firm* in relation to the communication or approval of a *financial promotion* that is not a *qualifying credit promotion* (but see *COB 3* (Financial Promotion)).**
- 3.1.7               G     A *communication* may contain both a *financial promotion* and a *qualifying credit promotion*, for example a building society leaflet which describes the range of mortgage and savings products it provides. In such cases, both *MCOB 3* and *COB 3* will be relevant.
- 3.1.8               G     As a result of articles 90 and 91 of the *Regulated Activities Order*:

- (1) a *qualifying credit promotion* is not subject to the advertising provisions of the Consumer Credit Act 1974, unless it is an *exempt generic promotion*; and
- (2) where a *firm* makes a *communication*, which consists of a *qualifying credit promotion* and information relating to a different form of lending that is not *qualifying credit* (for example an unsecured personal loan), the content of the latter will need to comply with the relevant advertising provisions of the Consumer Credit Act 1974.

**Authorised professional firms**

- 3.1.9 R (1) **Except for *MCOB 3.6.17R – MCOB 3.6.25R* (Annual percentage rate (APR)), *MCOB 3* does not apply to an *authorised professional firm* in relation to the *communication* of a *qualifying credit promotion* if the following conditions are satisfied:**
- (a) **the *firm*'s main business must be the practice of its profession (see *IPRU (INV) 2.1.2R(3)*);**
  - (b) **the *qualifying credit promotion* must be made for the purposes of and incidental to the promotion or provision by the *firm* of:**
    - (i) **its professional services; or**
    - (ii) **its *non-mainstream regulated activities* (see *PROF 5.2* (Nature of non-mainstream activities)); and**
  - (c) **the *qualifying credit promotion* must not be *communicated* on behalf of another person who would not be able lawfully to *communicate* the *qualifying credit promotion* if he were acting in the course of business.**
- (2) **In (1)(b)(i), “professional services” means services:**
- (a) **which do not constitute a *regulated activity*; and**
  - (b) **the provision of which is supervised and regulated by a *designated professional body*.**
- 3.1.10 G *Authorised professional firms* are reminded that in circumstances in which *MCOB 3* does not apply to the firm *MCOB 2.2.6R* (Clear fair and not misleading communication) may apply.

### **Nationals of other EEA states**

- 3.1.11 G A national of an *EEA State* (other than the *United Kingdom*) wishing to take advantage of the exemption in article 36 of the *Financial Promotion Order* in respect of a *qualifying credit promotion* should act in conformity with the rules in this chapter.

### **Illustrative examples of qualifying credit promotions**

- 3.1.12 G *MCOB 3 Ann 1G* gives examples of *qualifying credit promotions* that would satisfy some of the provisions of *MCOB 3*.

### **3.2 Application: what?**

#### **What do “communicate”, “approve” and “financial promotion” mean?**

- 3.2.1 G (1) The *rules* in this chapter adopt various concepts from the restriction on *financial promotion* by *unauthorised persons* in section 21(1) of the *Act* (Restrictions on financial promotion). *Guidance* on that restriction is contained in *AUTH App 1* (Financial promotion and related activities) and that *guidance* will be relevant to interpreting these *rules*. In particular, *guidance* on the meaning of:
- (a) “*communicate*” is in *AUTH App 1.6* (Communicate); and
  - (b) “invitation or inducement” and “*engage in investment activity*” (two elements which, with “*communicate*”, make up the definition of “*financial promotion*”) is in *AUTH App 1.4* (Invitation or inducement) and *AUTH App 1.7* (Engage in investment activity).
- (2) *Guidance* on the *approval* of a *qualifying credit promotion* is in *MCOB 3.11.1G* (Approval of qualifying credit promotions).

#### **Media of communication**

- 3.2.2 G (1) There is no restriction on the media of *communication* to which this chapter applies. It applies to a *qualifying credit promotion communicated* by any means, including by way of printed advertising, radio and television broadcasts, a personal visit, a telephone call, an e-mail, the Internet and electronic media such as digital and other forms of interactive television or media. Both solicited and unsolicited *communications* are covered.

- (2) *Qualifying credit promotions* may be *communicated* for example, by means of:
- (a) product brochures;
  - (b) general advertising in magazines, newspapers, radio and television programmes and websites;
  - (c) mailshots (whether distributed by post, facsimile, e-mail or other media);
  - (d) telemarketing activities, such as telephone calls made by call centres;
  - (e) written correspondence, telephone calls and face to face discussions with *customers*;
  - (f) sales aids which themselves constitute a *qualifying credit promotion*;
  - (g) presentations to groups of *customers*; and
  - (h) other publications, which may contain non-*personal recommendations* as to obtaining *qualifying credit*.

3.2.3 G *Guidance* on the use of the Internet for *communicating qualifying credit promotions* is in *AUTH* App 1.22 (The Internet).

#### **Exemptions**

3.2.4 R **This chapter does not apply to a *firm* in relation to a *qualifying credit promotion* of a kind listed in *MCOB 3.2.5R*, except that if the *firm* approves the *qualifying credit promotion*, the following apply:**

- (1) ***MCOB 3.1 to MCOB 3.5* (Application, Purpose and General);**
- (2) ***MCOB 3.6.3R* (Non-real time qualifying credit promotions: clear, fair and not misleading);**
- (3) ***MCOB 3.11.1G to MCOB 3.11.4G* (Approval of *qualifying credit promotions*; No approval of real time qualifying credit promotions; Approval of *real time qualifying credit promotions* when not all the rules apply); and**
- (4) **if the *firm* approves a non-real time qualifying credit promotion relating to *qualifying credit* by an overseas person *MCOB 3.11.5R* (Non-real time qualifying credit promotions for overseas persons) applies.**

## 3.2.5

**R** This table belongs to *MCOB 3.2.4R*.

<b>Exemptions</b>	
<b>This chapter does not apply to the following:</b>	
<b>(1)</b>	<b>an <i>illustration</i> produced in accordance with the requirements of <i>MCOB 5</i> <i>MCOB 6</i>, <i>MCOB 7</i> or <i>MCOB 9</i>;</b>
<b>(2)</b>	<b>a <i>qualifying credit promotion</i> which contains only one or more of the following:</b>
<b>(a)</b>	<b>the name of the <i>firm</i> (or its <i>appointed representative</i>);</b>
<b>(b)</b>	<b>a logo;</b>
<b>(c)</b>	<b>a contact point (address (including an e-mail address), telephone or facsimile number);</b>
<b>(d)</b>	<b>a brief, factual statement of the <i>firm</i>'s (or its <i>appointed representative</i>'s) main occupation;</b>
<b>(3)</b>	<b>a <i>qualifying credit promotion</i> which can lawfully be communicated by an <i>unauthorised person</i> without approval;</b>
<b>(4)</b>	<b>a <i>qualifying credit promotion</i> communicated from outside the <i>United Kingdom</i> which would be exempt under articles 30, 31, 32 or 33 of the <i>Financial Promotion Order</i> (Overseas communicators) if the office from which the <i>qualifying credit promotion</i> is communicated were a separate <i>unauthorised person</i> (but see <i>GEN 4.4.1R</i> (Business for private customers from non-UK offices));</b>

## 3.2.6

**G** *MCOB 3.2.5R(2)* exempts a *qualifying credit promotion* made by a *firm* or an *appointed representative* which refers to its activities only in general terms in image or brand advertising. The items identified in *MCOB 3.2.5R(2)* do not enable detailed information to be given about the *qualifying credit* available from the *firm*. Thus *firms* should avoid the use of names, logos or addresses, for example, which attempt to convey additional mortgage or cost-related information.

#### Combination of exemptions

## 3.2.7

**R** A *firm* may rely on more than one exemption (and also on *MCOB 3.3.1R* (Application: where?)) in relation to the same *qualifying credit promotion*.

## **Other handbook rules relevant to qualifying credit promotions**

- 3.2.8 G *Firms* are reminded that *qualifying credit promotions* (including those which are exempt) may be subject to more general *rules*, including *Principle 7* (Communications with clients), *SYSC 3* (Systems and controls) and *MCOB 2.2.6* (Clear, fair and not misleading communication).
- 3.2.9 G *Firms* are reminded that if in the course of making a *qualifying credit promotion* of any kind an adviser gives specific *advice* on *regulated mortgage contracts* to a *customer* about the suitability of a product for that individual, the adviser in giving the *advice* is subject to the *rules*, as appropriate, on advising and selling in *MCOB 4* (Advising and selling standards) and *MCOB 8* (Lifetime mortgages: advising and selling standards).
- 3.3 **Application: where?**
- Territorial scope**
- 3.3.1 R **This chapter applies to a *firm* only in relation to:**
- (1) **the *communication of a qualifying credit promotion to a person inside the United Kingdom*;**
  - (2) **the *communication of an unsolicited real time qualifying credit promotion, unless*:**
    - (a) **it is made from a place outside the *United Kingdom*; and**
    - (b) **it is made for the purposes of a business which is carried on outside the *United Kingdom* and which is not carried on in the *United Kingdom*; and**
  - (3) **the approval of a *non-real time qualifying credit promotion for communication to a person inside the United Kingdom*;**
- subject to *MCOB 3.3.3R* (Exceptions to territorial scope: rules without territorial limitation) and *MCOB 3.3.5* (Exceptions to territorial scope: distance contracts).**
- 3.3.2 G (1) The application under *MCOB 3.3.1R* is relevant both when a *firm communicates a qualifying credit promotion* itself and when a *firm approves a non-real time qualifying credit promotion for communication* by others. But see also *MCOB 3.3.3R* (Exceptions to territorial scope: rules without territorial limitation) regarding *approvals*.

- (2) The exemptions in *MCOB 3.2.5R* (Application: what?; Exemptions) also incorporate some territorial elements. In particular, the exemption for *financial promotions* originating outside the *United Kingdom* (section 21(3) of the *Act* (Restrictions on financial promotion)) (see *MCOB 3.2.5R(4)*) and the exemptions for overseas communicators (see *MCOB 3.2.5R(4)*) and the exemption for incoming *electronic commerce communications* (see *AUTH App 1.12.38G* (Incoming electronic commerce communication (article 20B))).
- (3) In the context of the provision of an *electronic commerce activity* to an *EEA ECA recipient*, the scope of *MCOB 3* is extended by *ECO 2.2.3R* (Financial promotion). This means that *MCOB 3* will apply for *communications to EEA ECA recipients*.

**Exceptions to territorial scope: rules without territorial limitation**

- 3.3.3 R Subject to *MCOB 3.3.5R* the following parts of this chapter apply without any territorial limitation if a *firm* approves a *qualifying credit promotion*:**
- (1) *MCOB 3.1* to *MCOB 3.5* (Application, Purpose and General);**
  - (2) *MCOB 3.6.3R(1)* (Non-real time qualifying credit promotions: clear, fair and not misleading); and**
  - (3) *MCOB 3.11.1R* to *MCOB 3.11.4G* (Approval of qualifying credit promotions; No approval of real time qualifying credit promotions; Approval of real time qualifying credit promotions when not all the rules apply).**
- 3.3.4 G** There is no need for a *qualifying credit promotion* which is indicated in *MCOB 3.3.1R* to be outside the territorial scope of the application of *MCOB 3* to be *approved* before being *communicated* by an *unauthorised person* (because the restriction in section 21 of the *Act* (Restrictions on financial promotion) does not apply). If a *firm* nevertheless *approves* such a *qualifying credit promotion*, it must comply with the *rules* indicated in *MCOB 3.3.3R*. However, a *firm* must not *approve* a *real time qualifying credit promotion* (see *MCOB 3.11.2R* (No approval of real time qualifying credit promotions)).

**Exceptions to territorial scope: distance contracts**

- 3.3.5 R (1) Notwithstanding *MCOB 3.3.1R* and *MCOB 3.3.3R*, where a *firm* which satisfies the conditions in (2)**



*communicates a qualifying credit promotion, the rules in (3) do not apply.*

- (2) The conditions are that:
- (a) *the firm communicates the qualifying credit promotion from an establishment maintained by the firm in an EEA State other than the United Kingdom, and not from an establishment maintained by the firm in the United Kingdom or outside the EEA;*
  - (b) either that *EEA State*:
    - (i) has implemented the *DMD*; or
    - (ii) has obligations in its domestic law corresponding to those provided for by the *DMD*;
  - (c) *the qualifying credit promotion relates, exclusively, to a distance contract, for the conclusion of which the obligations provided for by the DMD (or corresponding obligations) are applied by that State; and*
  - (d) *the firm is a national of an EEA State or a company or firm mentioned in article 48 of the Treaty.*
- (3) The *rules* which do not apply are:
- (a) *MCOB 3.6.1R (Non-real time qualifying credit promotions: name and contact point);*
  - (b) *MCOB 3.6.13R (Required risk statements);*
  - (c) *MCOB 3.6.15R (Transient advertising);*
  - (d) *MCOB 3.6.26R (Multi-rate mortgages);*
  - (e) *MCOB 3.6.27R (Fees for advice or arranging); and*
  - (f) *MCOB 3.8.2R(3) and (4) (Form and content of real time qualifying credit promotions).*

Meaning of ‘communicated to a person inside or outside the United Kingdom’

3.3.6 R For the purposes of this chapter:

- (1) *a qualifying credit promotion is communicated to a person outside the United Kingdom if it is:*
  - (a) *made to a person who receives it outside the United Kingdom; or*
  - (b) *directed only at persons outside the United Kingdom; and*
- (2) *a qualifying credit promotion is communicated to a person inside the United Kingdom if it is communicated to a person other than as described in (1);*

and see *MCOB 3.3.7R* and *MCOB 3.5.6R* which amplify this rule.

Meaning of ‘directed only at persons outside the United Kingdom’

- 3.3.7 R
- (1) If the conditions set out in 4(a), (b), (c) and (d) are met, *a qualifying credit promotion directed from a place inside the United Kingdom will be regarded as directed only at persons outside the United Kingdom.*
  - (2) If the conditions set out in 4(c) and (d) are met, *a qualifying credit promotion directed from a place outside the United Kingdom will be regarded as directed only at persons outside the United Kingdom.*
  - (3) In any other case, where one or more of the conditions in 4(a) to (e) is met, that fact will be taken into account in determining whether *a qualifying credit promotion is directed only at persons outside the United Kingdom* (but *a qualifying credit promotion may still be regarded as directed only at persons outside the United Kingdom even if none of these conditions is met*).
  - (4) The conditions are that:
    - (a) *the qualifying credit promotion is accompanied by an indication that it is directed only at persons outside the United Kingdom;*
    - (b) *the qualifying credit promotion is accompanied by an indication that it must not be acted upon by persons in the United Kingdom;*
    - (c) *the qualifying credit promotion is not referred to in, or directly accessible from, any other qualifying credit promotion which is made to a person or directed at persons in the United Kingdom by or on behalf of the same person;*

- (d) **there are in place proper systems and procedures to prevent recipients in the *United Kingdom* (other than those to whom the *qualifying credit promotion* might otherwise lawfully have been made) obtaining the *qualifying credit* to which the *qualifying credit promotion* relates, from the *person* directing the *qualifying credit promotion*, a *close relative* of his or a member of the same *group*;**
- (e) **the *qualifying credit promotion* is included in:**
  - (i) **a website, newspaper, journal, magazine or periodical publication which is principally accessed in or intended for a market outside the *United Kingdom*; and**
  - (ii) **a radio or television broadcast or teletext service transmitted principally for reception outside the *United Kingdom*.**

### 3.4

#### Purpose

- 3.4.1 G (1) Section 21(1) of the *Act* (Restriction on financial promotion) imposes a restriction on the *communication* of *financial promotions* (*qualifying credit promotions* in *MCOB*) by *unauthorised persons*. A *person* must not, in the course of business, *communicate* a *qualifying credit promotion* unless:
  - (a) he is an *authorised person*; or
  - (b) the content of the *qualifying credit promotion* is approved by an *authorised person*.
- (2) However, the *Financial Promotion Order* exempts from the restriction created by section 21(1) of the *Act* certain types of *financial promotions* (*qualifying credit promotions* in *MCOB*).
- 3.4.2 G (1) The purpose of this chapter is to provide *rules* and *guidance* for a *firm* which wishes to *communicate* or *approve* a *qualifying credit promotion*. *MCOB 3.5.2G* (Application: what? Exemptions) provides a guide to the topics covered in this chapter.
- (2) This chapter amplifies, for activities within its scope:
  - (a) *Principle 6* (Customers' interests) which requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly; and

- (b) *Principle 7* (Communications with clients) which requires a *firm* to pay due regard to the information needs of its *clients*, and *communicate* information to them in a way which is clear, fair and not misleading.

### 3.5 General

#### Topics covered in this chapter

- 3.5.1 G *MCOB 3* includes some provisions which are applicable to all types of *qualifying credit promotion* and others which apply only to specific types. *MCOB 3.5.2G* has been provided to help locate the areas of particular relevance to types of *qualifying credit promotion*.
- 3.5.2 G This table belongs to *MCOB 3.5.1G*

<b>Areas of particular relevance to types of qualifying credit promotion</b>			
(1)	Provisions applying to all <i>qualifying credit promotions</i>	Application – who?	<i>MCOB 3.1</i>
		Application – what?	<i>MCOB 3.2</i>
		Application – where?	<i>MCOB 3.3</i>
		Purpose	<i>MCOB 3.4</i>
		General	<i>MCOB 3.5</i>
(2)	Provisions applying only to <i>non-real time qualifying credit promotions</i>	Form and content of non-real time qualifying credit promotions	<i>MCOB 3.6</i>
		Confirmation of compliance	<i>MCOB 3.9</i>
		Records	<i>MCOB 3.10</i>
(3)	Provisions applying only to <i>real time qualifying credit promotions</i>	Unsolicited real time qualifying credit promotions	<i>MCOB 3.7</i>
		Form and content of real time qualifying credit promotions	<i>MCOB 3.8</i>

(4)	Provisions applying only to certain types of <i>qualifying credit promotions</i>	Communication and approval of qualifying credit promotions for an overseas or unauthorised person	<i>MCOB 3.11</i>
		The Internet and other electronic media	<i>MCOB 3.12</i>

### Other regulations and guidelines

3.5.3 G A *firm* communicating a *qualifying credit promotion* may also be subject to other regulations and guidelines, outside the remit of the *FSA*, such as:

- (1) the codes issued from time to time by the Advertising Standards Authority, the Independent Television Commission and the Radio Authority;
- (2) regulations of any *overseas regulator* (where relevant) if the *firm* intends to market from the *United Kingdom* into any other country;
- (3) the Privacy and Electronic Communications (EC Directive) Regulations 2003
- (4) the Timeshare Act 1992, as amended by the Timeshare Regulations 1997 (SI 1997/1081); and
- (5) the Consumer Protection Act 1987, or Consumer Protection (Northern Ireland) Order 1987 (SI 1987/2049 (N.I 20)).

### ‘Real time’ and ‘non-real time’ qualifying credit promotions

3.5.4 G This chapter draws a distinction between *real time* and *non-real time qualifying credit promotions*. *Guidance* on the meaning of those expressions, which are based upon article 7 of the *Financial Promotion Order*, is contained in *AUTH* App 1.10.2 (Real time v. non-real time promotions).

- 3.5.5 R
- (1) A ‘*real time qualifying credit promotion*’ is a *qualifying credit promotion* which is *communicated* in the course of a personal visit, telephone conversation or other interactive dialogue.
  - (2) A ‘*non-real time qualifying credit promotion*’ is a *qualifying credit promotion* that is not a *real time qualifying credit promotion*. It includes a *qualifying credit promotion* made by letter, e-mail or contained in a newspaper, journal, magazine, other periodical

publication, website, television or radio programme, or teletext service.

- (3) The following are to be regarded as indications that a *qualifying credit promotion* is a *non-real time qualifying credit promotion*:
- (a) the *qualifying credit promotion* is *communicated* to more than one *person* in identical terms (save for details of the recipient's identity);
  - (b) the *qualifying credit promotion* is *communicated* by way of a system which in the normal course constitutes or creates a record of the communication which is available to the recipient to refer to at a later time; and
  - (c) the *qualifying credit promotion* is *communicated* by way of a system which in the normal course does not enable or require the recipient to respond immediately to it.

#### Meaning of 'made', 'directed at' and 'recipient' in MCOB 3

3.5.6 R (In accordance with article 6 of the *Financial Promotion Order* (Interpretation: communications)) any reference in this chapter to:

- (1) a *communication* being made to another *person* is a reference to a *communication* being addressed, whether verbally or in legible form, to a particular *person* or *persons* (for example, where it is contained in a telephone call or letter);
- (2) a *communication* being directed at *persons* is a reference to a *communication* being addressed to *persons* generally (for example where it is contained in a television broadcast or website); and
- (3) a 'recipient' of a *communication* is the *person* to whom the *communication* is made or, in the case of a *non-real time qualifying credit promotion* which is directed at *persons* generally, any *person* who reads or hears the *communication*.

3.6 Form and content of non-real time qualifying credit promotions

Non-real time qualifying credit promotions: name and contact point

**3.6.1 R A non-real time qualifying credit promotion must contain the name of the *firm* or its *appointed representative* and either an address or a contact point from which an address is available.**

**3.6.2 G (1) For the purposes of *MCOB* 3.6.1R, the name may be a trading name or shortened version of the legal name of the *firm* (although other legislation, for example, the Companies Act 1985, may require a *firm* to include information not required by this *rule*).**

**(2) The type of contact point envisaged for a *firm* by *MCOB* 3.6.1R is an e-mail address or telephone or facsimile number, where a *customer* can contact the *firm* for its address.**

**(3) A *firm* is not required in a *qualifying credit promotion* which it *communicates* or *approves* to name the *FSA* as its regulator. However, to comply with *MCOB* 3.6.3R (Non real time qualifying credit promotions: clear, fair and not misleading), if the *firm* chooses to name the *FSA* as its regulator and the *qualifying credit promotion* refers to matters not regulated by the *FSA*, it should also make clear that those matters are not regulated by the *FSA*. This might arise, for example, where the communication included both a *qualifying credit promotion* and a promotion for *unsecured lending*.**

**Non-real time qualifying credit promotions: clear, fair and not misleading**

**3.6.3 R (1) A *firm* must be able to show that it has taken reasonable steps to ensure that a *non-real time qualifying credit promotion* is clear, fair and not misleading.**

**(2) A *non-real time qualifying credit promotion* which includes a comparison or contrast must:**

**(a) compare *qualifying credit* meeting the same needs or which is intended for the same purpose;**

**(b) objectively compare one or more material, relevant, verifiable and representative features of the *qualifying credit*, which may include price;**

**(c) not create confusion in the market place between the *firm* itself (or the *person* whose *qualifying credit promotion* it *approves*) and a competitor or between the *firm's* trademarks, trade names, other distinguishing marks,**

*qualifying credit* (or those of the *person* whose *qualifying credit promotion* it *approves*) and those of a competitor;

- (d) not discredit or denigrate the trademarks, trade names, other distinguishing marks, *qualifying credit*, services, activities or circumstances of a competitor;
- (e) not take unfair advantage of the reputation of a trademark, trade name or other distinguishing marks of a competitor;
- (f) not present *qualifying credit* as an imitation or replica of *qualifying credit* bearing a protected trademark or trade name; and
- (g) indicate in a clear and unequivocal way in any comparison referring to a special offer the date on which the offer ends or, where appropriate, that the special offer is subject to the availability of the *qualifying credit*, and, where the special offer has not yet begun, the date of the start of the period during which the special price or other specific conditions will apply.

3.6.4

E

- (1) A *firm* should take reasonable steps to ensure that, for a *non-real time qualifying credit promotion*:
  - (a) it does not omit any matters the omission of which causes the *qualifying credit promotion* not to be clear, fair and not misleading;
  - (b) if it describes a feature of any *qualifying credit*, it gives no less prominence to the possible disadvantages than to the benefits associated with that feature;
  - (c) it uses plain and intelligible language, and is easily legible (or, in the case of oral promotions, clearly audible);
  - (d) the accuracy of all statements of fact in it can be substantiated;
  - (e) its promotional purpose is not in any way disguised or misrepresented;
  - (f) any statement of fact, promise or prediction is clear, fair and not misleading and any relevant assumptions are clearly and prominently disclosed (but a *firm* is not required to explain,



on the face of the *qualifying credit promotion*, the basis on which a stated *APR* is calculated: see *MCOB 3.6.18G*);

- (g) any statement of opinion is honestly held and, unless consent is impracticable, given with the written consent of the *person* concerned;
- (h) the facts on which any comparison or contrast is made are verified, or, alternatively, that relevant assumptions are prominently disclosed and that the comparison or contrast is presented in a fair and balanced way, which is not misleading and includes all factors which are relevant to the comparison or contrast;
- (i) it does not contain any false indications, in particular as to:
  - (i) the *firm's* independence;
  - (ii) the *firm's* resources and scale of activities; or
  - (iii) the scarcity of any *qualifying credit*;
- (j) the design, content or format does not in any way disguise, obscure or diminish the significance of any statement, warning or other matter which the *qualifying credit promotion* is required by this chapter to contain;
- (k) it does not include any reference to approval by the *FSA* or any government body, unless such approval has been obtained in writing from the *FSA* or that body (see also *GEN 1.2* (Referring to approval by the *FSA*));
- (l) where it contains information required as a consequence of the following provisions, the items of information provided in relation to each provision appear in proximity to each other:
  - (i) *MCOB 3.6.11R*;
  - (ii) *MCOB 3.6.13R* (Required risk statements), unless *MCOB 3.6.15R* (transient advertising) applies;
  - (iii) *MCOB 3.6.17R* (Annual percentage rate (*APR*));

- (iv) ***MCOB 3.6.25R***;
  - (v) ***MCOB 3.6.26R (Multi-rate mortgages)***;  
**and**
  - (vi) ***MCOB 3.6.27R (Fees for advice or arranging)***).
- (2) (a) **Contravention of *MCOB 3.6.4E(1)* may be relied on as tending to show contravention of *MCOB 3.6.3R(1)*.**
- (b) **Compliance with *MCOB 3.6.4E(1)* may be relied on as tending to show compliance with *MCOB 3.6.3R(1)*.**
- 3.6.5 G In relation to *MCOB 3.6.3R*:
- (1) *firms* should avoid the use of small print to qualify prominent claims;
  - (2) if a *non-real time qualifying credit promotion* includes information on the performance of the *firm*, on conditions in the market, interest rates, *APRs* or other *price information* this information should be relevant and recent. *Firms* should therefore avoid including this information in *qualifying credit promotions* which have a long shelf-life, and where the information can become outdated; and
  - (3) *firms* must ensure that an adequate description of mortgage products is given. For example *firms* should take care to ensure that where a rate is variable at any time during the term of the mortgage, the content of the *qualifying credit promotion* does not imply the rate may be fixed.
- 3.6.6 G The effect of *MCOB 3.6.4E(1)(b)* will depend upon the content of the promotion. A non-exhaustive list of examples satisfying *MCOB 3.6.4E(1)(b)* follows:
- (1) a promotion which, when describing any *cashback* offered to the *customer*, also clearly refers to any relevant conditions, such as a requirement to pay back some or all of the *cashback* on early repayment of the mortgage;
  - (2) a promotion which, when describing any fixed or discount rate, also clearly states the duration of any *early repayment charges*;
  - (3) a promotion which, when describing any reduction in regular payments following from the re-arrangement of existing loans, also clearly indicates any increase in the

total cost and any extension to the repayment period for the *customer*;

- (4) a promotion which, when describing any possible monetary saving, also clearly states how this could be achieved;
- (5) a promotion which, when including references to non-standard services or facilities, also clearly states that an additional fee may be payable for these; and
- (6) a promotion which, when it includes an indication of an initial payment holiday (for example, “pay nothing for 3 months”), also makes clear whether or not interest will be charged during this period.

3.6.7 G The requirement in *MCOB* 3.6.4E(1)(l) that certain information must be given in proximity means, for example, in relation to printed *qualifying credit promotions*, that this information is all visible at the same time.

**3.6.8 R In complying with its obligations under *MCOB* 3.6.3R (Non-real time promotions: clear fair and not misleading), a *firm* must ensure that the *qualifying credit promotion* does not contain any of the following words or expressions, unless the relevant condition applies:**

- (1) the word ‘overdraft’ or any similar expression as describing any agreement for running-account credit except an agreement enabling the *customer* to overdraw on a current account;
- (2) the expression ‘interest free’ or any similar expression (such as ‘0% Finance’ or ‘Interest Free Option’) indicating that a *customer* is liable to pay no greater amount in respect of a transaction financed by credit than the *customer* would be liable to pay as a cash purchaser in relation to the same transaction, except where:
  - (a) the *total amount payable* by the *customer* does not exceed the cash price; or
  - (b) *MCOB* 3.6.26R (Multi-rate mortgages) applies, in which case the expression may be used in respect of any rate of charge of 0% provided that during the period in which the rate applies there is no interest charged and no increase in the amount of the mortgage loan.

- (3) the expression ‘no deposit’ or any similar expression, except where no advance payments are required to be made on the loan;
- (4) the expression ‘mortgage guaranteed’, ‘pre-cleared’ or any similar expression, unless the *qualifying credit promotion* invites entry into a contract that is free of any conditions regarding the credit status of the *customer*; and
- (5) the expression ‘gift’, ‘present’ or any similar expressions, unless there are no conditions which would require the *customer* to return the money or items that are the subject of the claim.

- 3.6.9 R ***A non-real time qualifying credit promotion must:***
- (1) describe any *early repayment charge* as an ‘early repayment charge’ and not use any other expression to describe such charges; and
  - (2) describe any *higher lending charge* as a ‘higher lending charge’ and not use any other expression to describe such charges.
- 3.6.10 G (1) It cannot be assumed that *customers* necessarily have an understanding of the *qualifying credit* being promoted. If a *non-real time qualifying credit promotion* is specially designed for a targeted collection of *customers* who are reasonably believed to have particular knowledge of the *qualifying credit* being promoted, this fact should be made clear.
- (2) In relation to quotations of opinion:
- (a) where only part of an opinion is quoted, it should nevertheless be a fair representation; and
  - (b) any connection between the holder of the opinion and the *firm* should be made clear.
- 3.6.11 R ***A non-real time qualifying credit promotion that features qualifying credit which is conditional upon the customer obtaining one or more further products from a specific firm (or its agents or associates) must prominently state the compulsory nature of these purchases.***
- 3.6.12 G *MCOB 3.6.11R* is concerned with ensuring that *customers* are adequately informed, at an early stage, as to the existence of any *tied products* or services. However, it does not introduce equivalent disclosure requirements for services or products that

must be obtained as a condition for the making of the loan, but where the *customer* has a free choice as to the supplier.

#### Required risk statements

- 3.6.13 R ***A non-real time qualifying credit promotion must, unless MCOB 3.6.15R (Transient advertising) applies, prominently contain one or more of the following statements in the circumstances described:***
- (1) **where the *qualifying credit promotion* relates to a *regulated lifetime mortgage contract*:**  
**‘This is a lifetime mortgage. To understand the features and risks, ask for a personalised illustration.’**
  - (2) **where the *qualifying credit promotion* refers to paying off unsecured debts (for example, credit cards, personal loans or overdrafts) by taking out *qualifying credit*:**  
**‘Think carefully before securing other debts against your home. Your home may be repossessed if you do not keep up repayments on your mortgage.’**
  - (3) **in all cases except (1) and (2):**  
**‘Your home may be repossessed if you do not keep up repayments on your mortgage.’**
  - (4) **where the mortgage will be denominated in a currency other than sterling:**  
**‘Changes in the exchange rate may increase the sterling equivalent of your debt.’**
  - (5) **where more than one of the statements in (1) to (4) applies, each relevant statement should be included in the *qualifying credit promotion*. In such cases, the statement set out in (1), (2) or (3) should precede that in (4).**
- 3.6.14 G (1) Prominence of relevant information can play a key role in ensuring that a *communication* is clear, fair and not misleading. As a consequence, a number of requirements in *MCOB* relate to prominence. Where this is the case, the *FSA* will assess prominence in the context of the promotion as a whole. Use can be made of the positioning of text, background and text colour and typesize to ensure that prescribed information meets the requirements of *MCOB*. The surrounding of required statements with other information should be avoided where this might detract

from the prominence which it is obligatory to afford to the statements.

- (2) *Firms* may if they wish include a foreign language version of any required warning, in addition to the English language version required by these *rules*. If foreign language versions of warnings are included, *firms* are reminded of prominence requirements in *MCOB* 3.6.13R and *MCOB* 3.6.14G(1). Information should not be included which detracts from the required prominence of warning statements.

### Transient advertising

3.6.15 R ***MCOB* 3.6.13R (Required risk statements) does not apply if the non-real time qualifying credit promotion is communicated:**

- (1) **by way of sound broadcasting or television where the primary purpose of the programming in which the promotion is contained is not to promote lending; or**
- (2) **by an exhibition of pictures or photographic or cinematographic films.**

3.6.16 G (1) *MCOB* 3.6.15R(1) is intended to distinguish between promotions in breaks between ‘normal’ commercial broadcast programming (where the text prescribed in *MCOB* 3.6.13R(Required risk statements) is not required) and promotions in breaks which are in or around programming intended to promote lending (where *MCOB* 3.6.13R (Required risk statements) applies).

- (2) In relation to promotions on dedicated interactive television services, if the promotion is not contained within programming but instead forms a separate feature, the exemption offered by *MCOB* 3.6.15R(1) would not be available.

### Annual percentage rate (APR)

3.6.17 R (1) ***A firm* must ensure that if a non-real time qualifying credit promotion contains either price information for specific qualifying credit, or makes reference (either explicitly or implicitly) to the availability of credit for customers who might otherwise consider their access to credit restricted, the promotion also:**

- (a) **states the APR;**
- (b) **gives the APR, and the accompanying statement in (3), with no less prominence than any price information or reference (either explicitly or**

implicitly) to the availability of credit for *customers* who might otherwise consider their access to credit restricted; and

(c) positions the *APR* after any other rate of charge relating to the *qualifying credit*, clearly distinguishing it from any such rate but without interjecting other information in between the *APR* and any other rate of charge.

(2) A *firm* must calculate the *APR* in accordance with *MCOB 10* (Annual percentage rate).

(3) The *APR* must be expressed as follows, with **X** being the *APR* calculated for the particular *qualifying credit*:

**‘The overall cost for comparison is X% APR’**

3.6.18 G *MCOB 3.6.17R* does not require a *firm* to explain the basis on which the *APR* is calculated, or to provide a figure for the *total charge for credit*, in the *non-real time qualifying credit promotion*.

3.6.19 G For the purposes of *MCOB 3.6.17R(1)*, references to the availability of credit for *customers* who might otherwise consider their access restricted include references to:

- (1) credit history; or
- (2) credit rating; or
- (3) county court judgments; or
- (4) employment; or
- (5) housing circumstances (for example, council tenants).

3.6.20 G (1) In relation to *MCOB 3.6.17R(1)(c)*, the intention is that the *APR* should follow on, but be readily identifiable as different, from the indicated rate or rates of charge.

(2) For multi-rate products this should mean that the *APR* is presented, in sequence, after the different rates of charge that apply.

(3) The *APR* may be distinguished from other rates of charge by techniques such as using a contrasting (and legible) colour for text. However, the requirement of *MCOB 3.6.17R(1)(c)* will not be satisfied by text devices such as the use of brackets which tend to diminish the impact of the *APR*.

- 3.6.21 G If a *qualifying credit promotion* contains *price information* for more than one *qualifying credit* product, *MCOB 3.6.17R* requires an *APR* to be provided for each product. Where more than one *APR* is required to be given, each *APR* will need to be no less prominent than:
- (1) any *price information* relating to the particular product;
  - (2) any reference (either explicitly or implicitly) to the availability of credit for *customers* who might otherwise consider their access to credit restricted; and
  - (3) any other *APR* in the *qualifying credit promotion*.
- 3.6.22 R **If the *non-real time qualifying credit promotion* concerns a contract under which the *APR* varies (for example, depending upon the circumstances of the *customer*), the *APR* required by *MCOB 3.6.17R* (Annual percentage rate (*APR*)) is that which is representative of the business expected to arise from the promotion.**
- 3.6.23 R **For the purposes of *MCOB 3.6.22R*, an *APR* is not representative of business unless it is an *APR* at or below which at least 66% of *customers* responding to the promotion and who enter into a *qualifying credit* agreement which is the subject of the promotion would be charged.**
- 3.6.24 G (1) The *FSA* would not regard an *APR* described as ‘from X%’ as satisfying *MCOB 3.6.22R*.
- (2) In *MCOB 3.6.22R*, when determining the representative *APR*, account should be taken of the business that has arisen from similar *qualifying credit promotion* in the previous 12 months. Where the *qualifying credit promotion* is for a new product or business, reference should instead be had to the relevant business plans.
- 3.6.25 R **If the *non-real time qualifying credit promotion* concerns a contract where the *APR* varies depending upon the circumstances of the *customer*, the following further statement must be included with due prominence:**
- “The actual rate available will depend upon your circumstances. Ask for a personalised illustration.”**
- Multi-rate mortgages**
- 3.6.26 R **If the *non-real time qualifying credit promotion* is for a product where more than one rate of charge will or may apply during the course of the contract, and the *non-real time qualifying credit promotion* contains information about any of these rates then:**



- (1) **the *non-real time qualifying credit promotion* must contain a clear and no less prominent description of all of the rates of charge that will apply;**
- (2) **where any rate to be charged in the future is variable (such as the *mortgage lender's* standard variable rate), the rate indicated must be the level of that rate current at the time of the promotion; and**
- (3) **the rates must be stated in sequence from the rate initially applying through to the rate assumed to apply at the end of the mortgage, and after each rate must be given a statement:**
  - (a) **of its period of application; and**
  - (b) **that the rate then changes.**

**Fees for advice or arranging**

- 3.6.27 R **If a *non-real time qualifying credit promotion* relates to the *controlled activities of advising on or arranging qualifying credit* and a fee may be charged for these activities, a *firm* must ensure that a prominent indication is given of:**
- (1) **the amount of the fee (if known); or**
  - (2) **a representative fee based upon the business expected to arise from the promotion.**
- 3.6.28 G *MCOB* 3.6.27R seeks to ensure that *customers* are given early notice of the existence of any fees charged by intermediaries in connection with the provision of *qualifying credit*. Where the fee is known at the outset, this must be indicated. The indication could be either as a cash value or as a percentage. If the charging of a fee, and the level of this, are dependent upon the circumstances of the *customer*, the indication must be based upon the business that is expected to result from the promotion.
- 3.6.29 G *MCOB* 3.6.14G(1) provides further guidance in relation to prominence.
- 3.6.30 G *MCOB* 3.6.27R(2) does not require the promotion to set out the characteristics of the representative business (loan amount etc) on which the indicated fee is based. For example, where the fee charged by a *firm* relates to circumstances of the *customer* such as their previous credit history, it would be sufficient to state that "There will be a fee for mortgage advice. The precise amount will depend upon your circumstances but we estimate that it will be £X".

3.7

Unsolicited real time qualifying credit promotions

Meaning of ‘solicited’ and ‘unsolicited’ real time qualifying credit promotion

3.7.1

R

(1) An *unsolicited real time qualifying credit promotion* is a *real time qualifying credit promotion* which is not solicited as described in (2).

(2) A *solicited real time qualifying credit promotion* is a *real time qualifying credit promotion* which is solicited, that is, it is made in the course of a personal visit, telephone call or other interactive dialogue if that call, visit or dialogue:

(a) was initiated by the recipient of the *qualifying credit promotion*; or

(b) takes place in response to an express request from the recipient of the *qualifying credit promotion*;

and it is clear from all the circumstances when the call, visit or dialogue is initiated or requested that during the course of the visit, call or dialogue a *qualifying credit promotion* would be made.

(3) In (2), a *person* is not to be treated as expressly requesting a call, visit or dialogue:

(a) because he omits to indicate that he does not wish to receive any or any further visits or calls or to engage in any or any further dialogue;

(b) because he agrees to standard terms that state that such visits, calls or dialogues will take place unless he has signified clearly that, in addition to agreeing to the terms, he is willing for them to take place.

(4) If a *qualifying credit promotion* is solicited by a *person* (‘R’) it is treated as also having been solicited by any other *person* to whom it is made at the same time as R if that other *person* is a *close relative* of R or is expected to enter into any contract for *qualifying credit* jointly with R.

3.7.2

G

MCOB 3.7.1R is based on article 8 of the *Financial Promotion Order*. Guidance on whether a *real time qualifying credit promotion* is solicited is contained in AUTH App 1.10.8 (Solicited v unsolicited real-time promotions). AUTH App 1.10.11 to AUTH

App 1.10.14 also give guidance on who will be considered the 'recipient' of a communication.

### **Prohibition on unsolicited real time qualifying credit promotions to customers**

**3.7.3 R** *A firm must not make an unsolicited real time qualifying credit promotion unless the customer has an established existing customer relationship with the firm and the relationship is such that the customer envisages receiving unsolicited real time qualifying credit promotions.*

- 3.7.4 G**
- (1) *Firms are reminded of the exemptions in MCOB 3.2.5R (Application: what? exemptions). MCOB 3.7.3R does not prohibit an exempt unsolicited real time qualifying credit promotion.*
  - (2) *MCOB 3.2.5R(2) creates an exemption for qualifying credit promotions that contain only very limited information about the firm (such as its name or contact details). The limited nature of this exemption means that a firm is unlikely to be able to use it to induce a customer to approach the firm and turn any subsequent communication by the firm into a solicited real time qualifying credit promotion.*

### **3.8 Form and content of real time qualifying credit promotions**

**3.8.1 G** *A firm should note that MCOB 3.7.3R (Prohibition on unsolicited real time promotions to customers) prevents a firm from communicating to a customer an unsolicited real time qualifying credit promotion other than an exempt promotion (which is outside the scope of this chapter) or where MCOB 3.7.3R applies. Many solicited real time qualifying credit promotions will be exempt promotions (and, therefore, outside the scope of this chapter). Accordingly, MCOB 3.8.2R and 3.8.3G apply only to solicited real time qualifying credit promotions which are not exempt qualifying credit promotions and to unsolicited real time qualifying credit promotions within MCOB 3.7.3R.*

- 3.8.2 R** *A firm must ensure that an individual who makes a real time qualifying credit promotion on the firm's behalf:*
- (1) does so in a way which is clear, fair and not misleading;**
  - (2) does not make any untrue claims;**
  - (3) makes clear the purpose (or purposes) of the qualifying credit promotion at the initial point of communication, and identifies himself and the firm which he represents;**

- (4) **if the time and method of *communication* were not previously agreed by the recipient:**
  - (a) **checks that the recipient wishes him to proceed;**
  - (b) **terminates the *communication* if the recipient does not wish him to proceed (but may ask for another appointment);**
  - (c) **recognises and respects, promptly, the right of the recipient to:**
    - (i) **end the *communication* at any time;**
    - (ii) **refuse any request for another appointment;**
- (5) **gives any *person* with whom he arranges an appointment a contact point;**
- (6) **does not *communicate* with a *person*:**
  - (a) **at an unsocial hour, unless the *person* has previously agreed to such a *communication*;**
  - (b) **on an unlisted telephone number, unless the *person* has previously agreed to such calls on that number.**

3.8.3 G In *MCOB* 3.8.2R(6)(a) an unsocial hour usually means on a Sunday or before 9am or after 9pm on any other *day*. It could also mean other *days* of the week or other times if the *firm* knows that a particular *customer* would not wish to be called on that *day* or at that time for reasons of, for example, religious faith or night shift working.

3.8.4 G The requirements of *MCOB* 3.8.2R and 3.8.3G:

- (1) apply in respect of all individuals who initiate the *communication*, including advisers and call centre operators;
- (2) apply to all forms of *real time qualifying credit promotion* with *customers*, including face to face and telephone *qualifying credit promotion*;
- (3) but do not prevent, for example, a telephone call centre which has received a call from a *customer* at an hour generally regarded as unsocial, either responding to that call or asking during the call if the *customer* would like details of other *qualifying credit*.

- 3.8.5 G SYSC 3.2.20R (Records) requires a *firm* to take reasonable care to make and retain certain records. For a telemarketing campaign to which MCOB 3.8.2R and 3.8.3G apply, those records should include copies of any scripts used.
- 3.8.6 G *Firms* should note the additional disclosure requirements in MCOB 4.4.7 (Disclosure where initial contact is by telephone) and MCOB 4.5 (Additional disclosure for distance mortgage mediation contracts with retail customers) in relation to telephone calls that may fall within the definition of a *financial promotion*.

### 3.9 Confirmation of compliance

- 3.9.1 R (1) **Before a *firm* communicates or approves a non-real time qualifying credit promotion it must confirm that the qualifying credit promotion complies with the rules in this chapter.**
- (2) **A *firm* must arrange for the confirmation exercise in (1) to be carried out by an individual or individuals with appropriate expertise.**
- 3.9.2 G (1) In MCOB 3.9.1R(2) ‘appropriate expertise’ will vary depending on the complexity of the *qualifying credit promotion* and the *qualifying credit* to which it relates. The individuals engaged by a *firm* to confirm the compliance of its *qualifying credit promotions* with this chapter may themselves have different levels of expertise and therefore a different level of authority for confirmation depending on the type of promotion and the *qualifying credit* involved.
- (2) A *firm* may arrange for a third party with appropriate expertise to carry out the confirmation exercise on the *firm's* behalf, but the responsibility for the *qualifying credit promotion* remains with the *firm*.

#### Withdrawing confirmation

- 3.9.3 R **If, at any time after it has completed a confirmation exercise in MCOB 3.9.1R(1), a *firm* becomes aware that a *qualifying credit promotion* no longer complies with the rules in this chapter, it must ensure that the *qualifying credit promotion* is withdrawn as soon as is reasonably practicable by:**
- (1) **ceasing to *communicate* it;**
- (2) **withdrawing its *approval* (if applicable); and**
- (3) **notifying any *person* that the *firm* knows to be relying on its *approval* (if applicable) or confirmation (under MCOB 3.9.5R).**

3.9.4

G

- (1) *MCOB 3.9.3R* is of particular importance to a *qualifying credit promotion*, such as a product brochure, that a *firm* uses over a period of time. It has little application to a *qualifying credit promotion* which is of its nature ephemeral, for example a mobile phone text message. Further, a *qualifying credit promotion* which clearly speaks as at a particular date will not cease to comply with the *rules* in this chapter merely because the passage of time has rendered it out-of-date. This does not mean, however, that a *qualifying credit promotion* can include information (such as *price information*) which is likely to become outdated during the currency of the *qualifying credit promotion* without the *firm* having regard to the need for any *qualifying credit promotion* to be clear, fair and not misleading. See further *MCOB 3.6.5G (2)*.
- (2) For compliance with *MCOB 3.9.3R*, the *FSA* will expect a *firm* to monitor its relevant *qualifying credit promotions* as part of the *firm's* routine compliance monitoring procedures. A *firm* may find it helpful to designate a relevant *qualifying credit promotion* with a 'review date', a date at which the *qualifying credit promotion* should be checked once more against the *rules* in this chapter. If it is found no longer to meet these requirements it should be withdrawn as soon as is reasonably practicable.
- (3) If at any time a *firm* becomes aware that *customers* may have been misled by a *qualifying credit promotion* it should consider whether *customers* who have responded to the *qualifying credit promotion* should be contacted with a view to explaining the position and offering any appropriate form of redress to those who have suffered financial loss.

**Communicating a qualifying credit promotion where another firm has confirmed compliance**

3.9.5

R

- A *firm* will not contravene any of the rules in this chapter in circumstances where it (*firm* 'A') communicates a non-real time *qualifying credit promotion* which has been produced by another *person* provided that:**
- (1) **A takes reasonable care to establish that another *firm* (*firm* 'B') has already confirmed the compliance of the *qualifying credit promotion* in accordance with *MCOB 3.9.1R*;**
  - (2) **A takes reasonable care to establish that A communicates the *qualifying credit promotion* only to recipients of the type for whom it was intended at the time B carried out the confirmation exercise; and**

- (3) so far as A is, or ought reasonably to be, aware:
  - (a) the *qualifying credit promotion* has not ceased to be clear, fair and not misleading since that time; and
  - (b) B has not withdrawn the *qualifying credit promotion*.

**3.10 Records**

**Requirement to make and retain records**

**3.10.1 R** A *firm* must make an adequate record of each *non-real time qualifying credit promotion* which it has confirmed as complying with the *rules* in this chapter. The record must be retained for a year from the date at which the *qualifying credit promotion* was last communicated.

**Content of records**

**3.10.2 G** In deciding what is an adequate record under *MCOB* 3.10.1R, a *firm* should consider including, or providing reference to, where appropriate, such matters as:

- (1) the name of the individual or individuals who confirmed that the *qualifying credit promotion* complied with the *rules* in this chapter;
- (2) the date of confirmation and (where appropriate) *approval*;
- (3) details of the medium for which the *qualifying credit promotion* was authorised;
- (4) the evidence supporting any material factual statement about *qualifying credit* in the *qualifying credit promotion*. For example, for any testimonial they use, advertisers should hold signed and dated proof, including a contact address. Unless they are genuine opinions taken from a published source, testimonials should only be used with the written permission of those giving them; and
- (5) where the promotion contains a typical *APR*, evidence to show that the *APR* was representative of the business expected to arise from the promotion (see *MCOB* 3.6.22R).

**3.10.3 G** (1) A *firm* should also retain a copy of the *qualifying credit promotion* as finally published or, if this is not practicable, monitor the published version to verify that it is in substantially the same format as the version which the *firm* confirmed complied with the *rules* in this chapter.

- (2) Records which should be retained include:
  - (a) any written *qualifying credit promotion* used by an adviser; and
  - (b) any written material which is used in an organised marketing campaign (including, for example, written mailshots whether sent by e-mail, post, facsimile or other media).
- (3) If the *qualifying credit promotion* is not in written form, the record should represent the actual *qualifying credit promotion* as accurately as possible.

### **Form of records**

- 3.10.4 G *MCOB* 2.8 (Record Keeping) applies to the form in which records required in accordance with this chapter must be kept.

## **3.11 Communication and approval of qualifying credit promotions for an overseas person or an unauthorised person**

### **Approval of qualifying credit promotions**

- 3.11.1 G
- (1) Section 21(1) of the *Act* (Restrictions on financial promotion) prohibits an *unauthorised person* from *communicating a financial promotion (qualifying credit promotion in the case of MCOB)*, in the course of business, unless an exemption applies or the *qualifying credit promotion* is *approved* by a *firm*.
  - (2) Most of the *rules* in this chapter apply when a *firm* *approves a qualifying credit promotion* in the same way as when a *firm* *communicates a qualifying credit promotion* itself. A *firm* therefore has a similar responsibility for a *qualifying credit promotion* that it *approves* as for one that it *communicates*. For example, a *firm* which *approves a non-real time qualifying credit promotion* must:
    - (a) if *MCOB* 3.9.1R applies, confirm that the *qualifying credit promotion* complies with the *rules* in this chapter; and
    - (b) if *MCOB* 3.6.3R(1) applies, be able to show that it has taken reasonable steps to ensure that the *qualifying credit promotion* is clear, fair and not misleading.
  - (3) A *firm* may also wish to *approve a qualifying credit promotion* that it *communicates* itself. This would ensure that an *unauthorised person* who then also *communicates* the *qualifying credit promotion* to another *person* will not



contravene the restriction in section 21(1) of the *Act* (Restrictions on financial promotion).

- (4) A *firm* which *approves* a promotion that is exempt under *MCOB* 3.2.5R (Application: what?; exemptions) or *MCOB* 3.3.1R (Application; where?) must still comply with certain *rules* in this chapter (see *MCOB* 3.2.4R (Application :what? exemptions) and *MCOB* 3.3.3R (Exceptions to territorial scope: rules without territorial limitation)).

#### **No approval of real time qualifying credit promotions**

- 3.11.2 R ***A firm must not approve a real time qualifying credit promotion.***

**Approval of qualifying credit promotions when not all the rules apply**

- 3.11.3 R ***If a firm approves a qualifying credit promotion in circumstances in which one or more of the rules in this chapter are expressly disapplied, the approval must be given on terms that it is limited to those circumstances.***

- 3.11.4 G If an *approval* is limited in accordance with *MCOB* 3.11.3R, and an *unauthorised person communicates* the *qualifying credit promotion* to *persons* not covered by the *approval*, the *unauthorised person* may commit an *offence* under section 21(1) of the *Act* (Restrictions on financial promotion). A *firm* giving a limited *approval* may wish to advise the *unauthorised person* accordingly.

#### **Non-real time qualifying credit promotions for overseas persons**

- 3.11.5 R ***A firm must not communicate or approve a non-real time qualifying credit promotion which relates to qualifying credit provided by an overseas person, unless:***

- (1) ***the qualifying credit promotion makes clear which firm has approved or communicated it and, where relevant, explains;***
- (a) ***that the rules made under the Act for the protection of customers do not apply;***
- (b) ***the extent and level to which the compensation scheme will be available, or if the scheme will not be available, a statement to that effect; and***

(c) **if the communicator wishes, the protection or compensation available under another system of regulation; and**

(2) **the *firm* has no reason to doubt that the *overseas person* will deal with *customers* in the *United Kingdom* in an honest and reliable way.**

### **3.12 The Internet and other electronic media**

3.12.1 G This section contains *guidance* on the use of the Internet and other electronic media to *communicate qualifying credit promotions*. *Firms* are also referred to the *guidance* in MCOB 2.7 (Application to electronic media and distance communications).

#### **Approach and general guidance**

3.12.2 G Any material, which meets the definition of a *qualifying credit promotion*, including any video or moving image material incorporated in any website containing a *qualifying credit promotion*, should comply with the *rules* in this chapter. See AUTH App 1.22 (The Internet) for further *guidance* on *financial promotions* on the Internet, including the treatment of hyperlinks and banners.

3.12.3 G As indicated in MCOB 3.3 (Application: where?), for the purposes of the *qualifying credit promotion rules* there are two types of approach to *qualifying credit promotion communicated* via the Internet and other electronic media:

(1) *real time qualifying credit promotions* where the *communication* is in the form, for example, of a telephone conversation, or other form of interactive dialogue; and

(2) *non-real time qualifying credit promotions* where the *customer* may, for example, choose from reading a description of the *qualifying credit*, through to the completion of a contract in a similar way to browsing through a leaflet rack. The *rules* in this chapter relating to hard copy *qualifying credit promotions* such as advertisements in magazines or newspapers apply equally to such promotions. E-mails, material displayed on a website and sound and television broadcasts are *non-real time qualifying credit promotions* (see MCOB 3.5.5R(2)).

3.12.4 G (1) Before using the Internet, digital or any other form of interactive television or other electronic media to promote its services, a *firm* should refer to legislation such as the Data Protection Act 1998 and the Computer Misuse Act 1990, as well as to this chapter.

- (2) In relation to *qualifying credit promotions communicated* by way of television, *firms* will want to have regard to Guidance Note 3 of the ITC Code of Advertising Standards and Practice on the use and appearance of superimposed text.
- (3) When designing websites and other electronic media, *firms* should be aware of the difficulties that can arise when reproducing certain colours and printing certain types of text. These difficulties could cause problems with the presentation and retrieval of required information. Any *qualifying credit promotion* communicated by the Internet, digital or other forms of interactive television is subject to the requirements in *MCOB 3.6* (Form and content of non-real time qualifying credit promotions) and *MCOB 3.8* (Form and content of real time qualifying credit promotions) as applicable.

### **Specific guidance**

3.12.5

#### **G The FSA website**

The *FSA's* web site <http://www.fsa.gov.uk> contains a wide range of information including pages of specific relevance to *customers*. *Firms* may, if they wish, include a reference or hyperlink to the *FSA's* site; this will not, however, replace any requirements of the *qualifying credit promotion rules*.

**Annex 1 G: Examples of *qualifying credit promotions***

This Annex belongs to *MCOB 3.1.12*. This Annex gives examples of *qualifying credit promotions* that comply with a number of provisions of *MCOB 3*. These examples are intended as a guide only, and are not exhaustive of the ways in which the identified provisions of *MCOB 3* can be satisfied. Firms may adopt other means of complying with the appropriate rule or evidential provision

**Example 1**

This example illustrates one method of using the exemption in *MCOB 3.2.4R*

ABC Associates <b>Mortgage Broker</b> Call us on 0800 000 000
--

**Example 2**

This example of a *qualifying credit promotion* published by a *mortgage intermediary* illustrates one method of complying with the following provisions of *MCOB 3*:-

3.6.1 R

3.6.13 R (3)

3.6.13 R (5)

3.6.27 R (2)

ABC ASSOCIATES <b>Finance Broker</b>  With access to hundreds of products from most main lenders we're sure to find the right solution for you. Need advice on what's best? No problem – all our staff are fully trained. Our charges are usually just £250.  Call us today on  0800 000 000  <b>Your home may be repossessed if you do not keep up repayments on your mortgage.</b>
---

### **Example 3**

This example of a *qualifying credit promotion* illustrates one method of complying with the following provisions of MCOB 3:-

3.6.1 R

3.6.5 G (3)

3.6.13 R (3)

3.6.17 R (1) (a)

3.6.17 R (1) (b)

3.6.17 R (3)

3.6.22 R

3.6.25 R

#### **ABC ASSOCIATES**

CCJ's? Bad credit history? No Bank Account?

We can help with all your mortgage needs.

Call us today on 0800 000 000

The overall cost for comparison is **9.9%APR**.

**The actual rate available will depend upon your circumstances. Ask for a personalised illustration.**

APR variable and based on a usual case.  
Our charges are usually £500.

**Your home may be repossessed if you do not keep up repayments on your mortgage.**

#### **Example 4**

This example of a *qualifying credit promotion* illustrates one method of complying with the following provisions of *MCOB* 3:-

3.6.1 R

3.6.3 R (1)

3.6.4 (E) (1) (b)

3.6.5 G (3)

3.6.9 R (1)

3.6.13 R (3)

3.6.17 R (1) (a)

3.6.17 R (1) (c)

3.6.17 R (3)

3.6.26 R

THE ABC MORTGAGE COMPANY

**Calling all first time buyers...**

**Get things off to a great start with our  
fixed rate mortgage**

**It's just the thing if you're starting out...**

**a low, low rate to help you into your first home**

**2.5%** for the first 6 months,  
changing to ...

**3.5%** for one year then changing  
to our variable rate which is  
currently...

**7.5%** and remaining on variable  
rate terms for the rest of the  
mortgage.

**An Early  
Repayment  
Charge is payable  
if you repay all or  
part of this  
mortgage within  
the first 18  
months.**

The overall  
cost for  
comparison  
is

**7.7%  
APR**

**Your home may be repossessed if you do not keep up  
repayments on your mortgage.**

**Call us now on 020 0000 0000**

## 4 ADVISING AND SELLING STANDARDS

### 4.1 Application

#### Who?

4.1.1 R This chapter applies to a *firm* in a category listed in column (1) of the table in *MCOB 4.1.2R* in accordance with column (2) of that table.

4.1.2 R Table

This table belongs to *MCOB 4.1.1R*

(1) Category of firm	(2) Applicable section
<i>mortgage lender</i>	whole chapter except <i>MCOB 4.6</i> and <i>MCOB 4.7</i>
<i>mortgage adviser</i>	whole chapter
<i>mortgage arranger</i>	whole chapter except <i>MCOB 4.7</i>

#### What?

4.1.3 R This chapter applies if a *firm* in the course of carrying on a *regulated mortgage activity*:

- (1) makes, or anticipates making, a *personal recommendation* about; or
- (2) gives, or anticipates giving, personalised information relating to;

the *customer*:

- (3) entering into a *regulated mortgage contract*; or
- (4) varying the terms of a *regulated mortgage contract* entered into by the *customer*.

4.1.4 R (1) *MCOB 4.4* (Initial disclosure requirements) applies only in relation to varying the terms of a *regulated mortgage contract* entered into by the *customer* in any of the following ways:

- (a) adding or removing a party;
- (b) taking out a further advance; or
- (c) switching all or part of the *regulated mortgage contract* from one type of interest rate to another.



(2) **Otherwise, this chapter, *MCOB 4*, applies in relation to any form of variation of a *regulated mortgage contract*.**

**4.1.5 R In relation to a *regulated lifetime mortgage contract* or a home reversion scheme, this chapter *MCOB 4* is replaced by *MCOB 8* (Lifetime mortgages: advising and selling standards).**

4.1.6 G *MCOB 4.1.5R* means that this chapter, *MCOB 4*, deals with standard *regulated mortgage contracts* only and therefore *firms* should note that the scope of service rules in *MCOB 4.3.1R* apply in respect of standard *regulated mortgage contracts* only.

4.1.7 G If a *firm* is an *authorised professional firm*, *MCOB 1.2.10R(3)* has the effect that when the *firm* conducts *non-mainstream regulated activities* with a *customer*, *MCOB 4.4* (Initial disclosure requirements) applies. The *firm* is only required to provide the initial disclosure information in *MCOB 4 Ann 1R* or *MCOB 4 Ann 2R* section 7 (What to do if you have a complaint) and section 8 (Are we covered by the Financial Services Compensation Scheme (FSCS)?).

## **4.2 Purpose**

4.2.1 G (1) This chapter amplifies *Principle 6* (Customers' interests), *Principle 7* (Communications with clients) and *Principle 9* (Customers: relationships of trust). *Principle 6* requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. *Principle 7* requires a *firm* to pay due regard to the information needs of its *clients* and communicate information to them in a way which is clear, fair and not misleading. *Principle 9* requires a *firm* to take reasonable care to ensure the suitability of its *advice*.

(2) The purpose of this chapter is to ensure that:

- (a) *customers* are adequately informed about the nature of the service which they may receive from a *firm* in relation to *regulated mortgage contracts*. In particular *firms* need to make clear to *customers* the scope of *regulated mortgage contracts* available from them; and
- (b) where *advice* is given, it is suitable for the *customer*. The steps *firms* need to take to ensure that the *customer* receives suitable *advice* will vary depending on the demands and needs of the *customer* and the type of *regulated mortgage contract*.

(3) This chapter also implements certain requirements of the *Distance Marketing Directive* in relation to *distance mortgage mediation contracts* (see *MCOB 4.5* (Additional disclosure for distance mortgage mediation contracts with retail customers))

and *MCOB* 4.6 (Cancellation of distance mortgage mediation contracts)).

### 4.3 Scope of service provided

#### Providing services within and beyond scope

- 4.3.1 R (1) Subject to (2), a *firm* must take reasonable steps to ensure that the scope of the service given to a *customer*, and the *regulated mortgage contracts* offered, is based on a selection from one of the following:
- (a) the whole market; or
  - (b) a limited number of *mortgage lenders*; or
  - (c) a single *mortgage lender*.
- (2) A *firm* may change the scope of the service it gives to a particular *customer* by widening the scope, for example, from that in (1)(c) to that in (b) or (a) but it must take reasonable steps to ensure that before doing so:
- (a) the *customer* is made aware of the proposed change by a communication in a *durable medium*; and
  - (b) the *customer's* attention is drawn to any change in the *fees* that the *customer* must pay to the *firm* for the *firm's* services.

- 4.3.2 R A *firm* must take reasonable steps to ensure that the extent of the scope of the service which it holds itself out as offering to a *customer* reflects the extent of that scope in practice.

- 4.3.3 G *SYSC* 3.2.6R (Compliance) requires a *firm* to “take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the *regulatory system*”. In meeting this requirement in relation to *MCOB* 4.3.2R, a *firm* which states that it provides a service based on a limited number of *mortgage lenders* (see *MCOB* 4.3.1R(1)(b)) should have adequate systems and controls in place to monitor whether business is actually placed with those *mortgage lenders*.

#### Whole of market

- 4.3.4 R (1) A *firm* which holds itself out as giving information or *advice* to *customers* on *regulated mortgage contracts* from the whole market must not give any such information or *advice* unless:

- (a) **it has considered a sufficiently large number of *regulated mortgage contracts* which are generally available from the market; and**
  - (b) **the consideration in (a) is based on criteria which reflect adequate knowledge of the *regulated mortgage contracts* generally available from the market as a whole.**
- (2) **A *firm* in (1) must satisfy the obligation in MCOB 4.7.2R by taking reasonable steps to ensure that a *personal recommendation* given to a *customer* is:**
- (a) **in accordance with the consideration in (1); and**
  - (b) **is the *regulated mortgage contract* which on the basis of that consideration is the most suitable to meet the *customer's* needs.**

4.3.5 G If a *firm* holds itself out as giving information or *advice* to *customers* on *regulated mortgage contracts* generally available from the whole market, the *firm* may choose to offer its *customers* only a selection of those *regulated mortgage contracts*. The *firm's* selection of *regulated mortgage contracts* for this purpose will need to be sufficiently large to enable the *firm* to satisfy the suitability requirement in MCOB 4.3.4R (Whole of market).

4.3.6 G (1) When offering only a selection of *regulated mortgage contracts* as described in MCOB 4.3.5G, a *firm* should ensure that its analysis of the market and of the available *regulated mortgage contracts* is kept adequately up to date. For example, a *firm* would need to update its selection of *regulated mortgage contracts* if it became aware that a *regulated mortgage contract* had become generally available offering an improved product feature, or a better interest rate, when compared with the *regulated mortgage contracts* currently in the *firm's* selection.

(2) One way in which a *firm* may wish to satisfy MCOB 4.3.4R is by using a panel of *mortgage lenders*, which includes representative *firms* from the whole market. However, if a *firm* wishes to offer a whole of market service through the use of a panel, it must still assess the individual *regulated mortgage contracts* that are being offered by *mortgage lenders* in making its selection.

### **Independence**

4.3.7 R (1) **When providing information or giving *advice* to a *customer* on *regulated mortgage contracts*, a *firm* must not hold itself out as acting independently unless it intends to:**

- (a) provide that service wholly or predominantly based on the whole market; and
    - (b) enable the *customer* to pay a *fee* for the provision of that service.
  - (2) A *firm* which in accordance with (1) holds itself out as independent must ensure that the information or *advice* subsequently given to the *customer* concerned is information or *advice* on *regulated mortgage contracts* from the whole market.
- 4.3.8 G (1) *MCOB 4.3.7R* stipulates what a *firm* must do if it is to hold itself out to any particular *customer* as acting independently. A *firm* which wishes to hold itself out generally as acting independently should ensure that doing so (for example through a trading name or advertising) is consistent with the kind of service which *customers* receive in relation to *regulated mortgages contracts*.
- (2) A *firm* that sells both *investments* and *regulated mortgage contracts* can offer from the whole market and therefore be ‘independent’ for one but offer only a limited range for the other. If this is the case, the *firm* should explain the different nature of the services in a way that meets the requirement for clear, fair and not misleading communications in *MCOB 2.2.6R* (Clear, fair and not misleading communications).
- 4.3.9 G *MCOB 4.3.7R*(1)(b) means that a *firm* wishing to hold itself out as independent will need to give a *customer* a purely *fee*-based option for paying its *fees*. However, the *firm* may in addition provide the *customer* with other payment options, such as a combination of *fees* and commission.
- Appointed representatives**
- 4.3.10 R A *firm* may restrict the *regulated mortgage contracts* it authorises a particular *appointed representative* to sell. If it does so, the *appointed representative* must reflect this restricted scope in the initial disclosure document provided to the *customer* in accordance with *MCOB 4.4.1R*(1)(c).
- 4.4 **Initial disclosure requirements**
- Disclosure where initial contact is not made by telephone**
- 4.4.1 R (1) A *firm* must ensure that, on first making contact with a *customer* when it anticipates giving personalised information or *advice* on a *regulated mortgage contract*, it:
- (a) establishes with the *customer* whether it will provide *advice* or information;

- (b) establishes with the *customer* how much he will pay or, alternatively, the basis on which the *firm* will be remunerated, where appropriate; and
- (c) (unless (2) applies) provides the *customer* with either:
  - (i) the initial disclosure document in *MCOB 4 Ann 1R*; or
  - (ii) in circumstances where the rules in *MCOB 4 Ann 2R* allow this, the initial disclosure document in *MCOB 4 Ann 2R*;
 subject to (3) and in a *durable medium*<sup>1</sup>.

- (2) The requirement in (1)(c) does not apply where;
  - (a) an initial disclosure document has already been provided by the *firm* and that document is still likely to be accurate and appropriate for the *customer*; or
  - (b) an initial disclosure document has already been provided by the *firm* which first made contact with the *customer* in respect of the particular *regulated mortgage contract*, and the *firm* subsequently making contact with the *customer*:
    - (i) does not anticipate altering or replacing the service described in that document; or
    - (ii) is not making contact with a view to concluding a *distance mortgage mediation contract*; or
  - (c) initial contact is made by telephone.
- (3) A *firm* may choose not to include the initial disclosure information required by sections 6, 7 and 8 of *MCOB 4 Ann 1R*, and sections 5, 7 and 8 of *MCOB 4 Ann 2R*, if it provides the *customer* with the information required by those sections in some other *durable medium* before the

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<sup>1</sup> The rules governing the use of the combined initial disclosure document for packaged investment products, insurance and mortgages were consulted upon in CP187 *Insurance selling and administration & other miscellaneous amendments* (June 2003). The final rules will be published (as MCOB 4 Ann 2R) in 2004. See Chapter 4 of the Policy Statement on CP186 for further details.

***customer makes an application for a regulated mortgage contract.***

- 4.4.2 G *MCOB 4.4.1(2)(b)* means, for example, that a *mortgage lender* will provide the initial disclosure document in a direct sale but not where the sale involves a *mortgage intermediary*. If a number of different *firms* are involved in relation to the transaction, having regard to *MCOB 2.5.4R(2)*, those *firms* should take reasonable steps to establish that the *customer* has been provided with an initial disclosure document as required by *MCOB 4.4.1R*.
- 4.4.3 G (1) In many cases, *MCOB 4.4.1R(1)* means that the initial disclosure document will be provided at the time of the first contact between the *firm* and the *customer*. However, there may be circumstances, for example in relation to a loan for a business purpose, where the possibility of the *customer* entering into, or varying the terms of, a *regulated mortgage contract* is only identified after preliminary discussions. Disclosure, in the context of *MCOB 4*, is only required once this possibility is identified.
- (2) In the *FSA's* opinion, the requirements at *MCOB 4.4.1R* and *MCOB 4.4.7R* would not apply when a *customer* contacts a *firm* simply to arrange to receive personalised information or *advice* on a *regulated mortgage contract* at a later time, such as when a *customer* books an appointment. In such cases, initial disclosure should be made when the *firm* first makes contact with the *customer* with a view to actually giving the information or *advice*. However, *firms* should note the additional disclosure requirements in *MCOB 4.5* (Additional disclosure for distance mortgage mediation contracts with retail customers), and, the need to ensure that the required information (to be provided with the initial disclosure document) is provided in good time (see *MCOB 4.5.3G(1)*).
- 4.4.4 G If a *firm* has provided a *customer* with an appropriate initial disclosure document but subsequently discovers that the *customer* wants different services from those originally anticipated and described in the document, the *firm* will need to establish the details of the new service to be provided to the *customer* and provide the *customer* with a new initial disclosure document in accordance with *MCOB 4.4.1R* or *MCOB 4.4.7R*.

**Uncertainty whether a mortgage is regulated**

- 4.4.5 R (1) **If at the point that initial disclosure must be made in accordance with *MCOB 4.4.1R* or *MCOB 4.4.7R* a *firm* is uncertain whether the contract will be a *regulated mortgage contract*, the *firm* must:**
- (a) **provide the initial disclosure document; or**

- (b) seek to obtain from the *customer* information that will enable the *firm* to ascertain whether the contract will be a *regulated mortgage contract*.
- (2) Where (1)(b) applies, the initial disclosure document must be provided unless, on the basis of the information provided by the *customer*, the *firm* has reasonable evidence that the contract is not a *regulated mortgage contract*.

**Information to be provided to customers on request**

- 4.4.6 R
- (1) If a *firm's* scope of service is based on *MCOB 4.3.1R(1)(b)*, it must maintain, and keep up to date, in a *durable medium* and in a form which is appropriate for distribution to the *customer*, a list of the *mortgage lenders* whose *regulated mortgage contracts* it offers. This list must also confirm whether or not the *firm* provides services in relation to all of the *regulated mortgage contracts* generally available from each *mortgage lender*.
  - (2) The *customer* must be provided with a copy of the information described in (1) on request.
  - (3) A *firm* must take reasonable steps to ensure that its *appointed representatives* provide a copy of the record in (1) to a *customer* on request.

**Disclosure where initial contact is by telephone**

- 4.4.7 R
- (1) If the initial contact of a kind in *MCOB 4.4.1R(1)* is by telephone, then unless *MCOB 4.4.1R(2)(a)* applies, the following information must be given before proceeding further:
    - (a) the name of the *firm* and (if the call is initiated by or on behalf of the *firm*) the commercial purpose of the call;
    - (b) the scope of the service provided by the *firm* (within the meaning of *MCOB 4.3.1R*);
    - (c) if the scope of the service is not based on the whole market, that the *customer* can request a copy of the list of *mortgage lenders* whose *regulated mortgage contracts* it offers and confirmation of whether the *firm* provides services in relation to all of the *regulated mortgage contracts* generally available from each *mortgage lender*;
    - (d) whether or not the *firm* will provide the *customer* with *advice* on those *regulated mortgage contracts* within its scope; and

(e) that the information given under (a) to (d) will be confirmed in writing.

(2) Provided that the telephone call in (1) has not led the *firm* to conclude that the *customer* is ineligible for any of its *regulated mortgage contracts*, and that the *customer* has provided his contact details, the *firm* must send the *customer* a copy of the initial disclosure document required by *MCOB 4.4.1R(1)* and any other information required to be provided, in a *durable medium* within five *business days* of the telephone call (see also *MCOB 4.5.2R(2)(b)* for the equivalent requirement in relation to *distance mortgage mediation contracts*).

(3) If the *customer* accepts the offer in (1)(c) of a list of the *mortgage lenders* whose *regulated mortgage contracts* the *firm* offers, that list must also be sent with the information required in (2).

4.4.8 G *Firms* are reminded of the requirements in *MCOB 3.8* (Form and content of real time qualifying credit promotions) in relation to telephone calls that may fall within the definition of a *financial promotion* and should also note the additional requirements that apply in relation to *distance mortgage mediation contracts* with *retail customers* in *MCOB 4.5* (Additional disclosure for distance mortgage mediation contracts with retail customers).

#### 4.5 Additional disclosure for distance mortgage mediation contracts with retail customers

4.5.1 G There are certain additional disclosure requirements laid down by the *Distance Marketing Directive* that will have to be provided by a *mortgage intermediary* to a *retail customer* prior to the conclusion of a *distance mortgage mediation contract*. The purpose of this section, *MCOB 4.5*, is to set out those additional requirements.

4.5.2 R If the initial contact of a kind in *MCOB 4.4.1R(1)* is with a *retail customer* with a view to concluding a *distance mortgage mediation contract*, a *firm* must:

(1) in addition to the initial disclosure information required by *MCOB 4.4.1R(1)(c)* and any other required information, provide the *retail customer* with the information in *MCOB 4 Ann 3R* in a *durable medium* in good time before the conclusion of the *distance mortgage mediation contract* with that *customer* unless an exemption in (2), (3), (4) or (5) applies.



**(2) Exemption: telephone sales**

**(a) This exemption applies if the service is being provided on the telephone and the *customer* wishes to enter into a contract with the *firm*. Subject to the *customer* giving his explicit consent to receiving only limited disclosure, the *firm* must, prior to the conclusion of the contract on the telephone, provide the *customer* with the following information in addition to the information in *MCOB 4.4.7R(1)*:**

- (i) the name of the person in contact with the *customer* and his link with the *firm*;**
- (ii) the total price to be paid by the *customer* to the *firm* for the services, including all related *fees*, charges and expenses, and all taxes paid through the *firm* or, where an exact price cannot be indicated, the basis for the calculation of the price, enabling the *customer* to verify it;**
- (iii) notice of the possibility that other taxes or costs may exist that are not paid through the *firm* or imposed by it;**
- (iv) the information about cancellation rights set out in *MCOB 4 Ann 3R(5)*; and**
- (v) that other information is available on request, and the nature of that information.**

**(b) Where (a) applies, the *firm* must send the *retail customer* without delay and, at the latest immediately after a contract is concluded, the information in *MCOB 4 Ann 3R* and any other information required to be provided in accordance with *MCOB 4*, in a *durable medium*.**

**(3) Exemption: certain other means of distance communication**

**This exemption applies if the contract is concluded at the *retail customer's* request using a *means of distance communication* (other than telephone) which does not enable provision of the information referred to in *MCOB 4 Ann 3R* in a *durable medium* before the conclusion of the contract. In that case, the *firm* must provide the *retail customer* with the information in a *durable medium* immediately after conclusion of the *distance mortgage mediation contract*.**

**(4) Exemption: successive operations or separate operations under an initial service agreement**

**This exemption applies if the *firm* has an initial service agreement with the *retail customer* and the contract is in relation to a successive operation or a separate operation of the same nature under that agreement.**

**(5) Exemption: other successive or separate operations**

**This exemption applies if:**

- (a) the *firm* has no initial service agreement with the *retail customer*; and**
- (b) the *firm* has performed an operation with the *retail customer* within the last year; and**
- (c) the contract is in relation to a successive operation or separate operation of the same nature.**

- 4.5.3      G      (1)      The information in *MCOB* 4 Ann 3R will be provided in ‘good time’ for the purposes of *MCOB* 4.5.2R(1), if provided in sufficient time to enable the *customer* to consider properly the services on offer.
- (2)      An example of the circumstances in which *MCOB* 4.5.2R(4) or (5) may apply is given in *MCOB* 4.4.4G. If the initial disclosure document and accompanying information (including that in *MCOB* 4 Ann 3R) was previously provided to a *customer* and continues to be appropriate, there is no need to provide the information again. If additional information is required, this may be provided by a supplementary document. However, if a service of a different nature is proposed, the *firm* is expected to provide a fresh initial disclosure document and, in respect of *distance mortgage mediation contracts* with *retail customers*, this will need to be accompanied by the information in *MCOB* 4 Ann 3R.

**Tacit renewals**

- 4.5.4      R      **Before renewing a *distance mortgage mediation contract* with a *retail customer* which involves a request for immediate or deferred payment, a *firm* must obtain the *retail customer*’s prior consent.**

- 4.5.5      G      It follows from *MCOB* 4.5.4R that, for a *distance mortgage mediation contract* to be automatically renewable on expiry, the *retail customer* will need to have agreed to this when the contract is first entered into.

## 4.6 Cancellation of distance mortgage mediation contracts

- 4.6.1 G A *retail customer* has no right to cancel a *regulated mortgage contract* concluded with a *firm* but may have a right to cancel a *distance contract* concluded with a *mortgage intermediary* for the provision of his services. Whether a *mortgage intermediary* concludes a *distance mortgage mediation contract* with a *retail customer* will depend on the circumstances. For example, an intermediary may not, in *advising on* or *arranging a regulated mortgage contract*, act contractually on behalf of, or for, the *customer*. In such circumstances, no *distance mediation contract* will arise for the *firm's* services, and therefore no right to cancel. If there is a contract between the *customer* and the *mortgage intermediary*, however, and therefore there is a right to cancel, the *firm* is required by *MCOB 4.5.2R(1)* to provide the information in *MCOB 4 Ann 3R(5)*.
- 4.6.2 G The information provided in accordance with *MCOB 4 Ann 3R(5)* should be sufficiently clear, prominent and informative to enable the *retail customer* to understand the right to cancel.
- 4.6.3 G Where the notice of the right to cancel forms part of another document, or is one of a number of documents sent to the *retail customer* at the same time, a *firm* should ensure that the presence of the notice of the right to cancel is drawn to the *retail customer's* attention.

### Cancellation period

- 4.6.4 R (1) **A *retail customer* has a right to cancel a *distance mortgage mediation contract* in accordance with this section.**
- (2) **The right to cancel must be exercised within 14 days beginning on the later of:**
- (a) **the day of the conclusion of the contract; or**
  - (b) **the day on which the *retail customer* receives the contractual terms and conditions and other information required by *MCOB 4.4* and *MCOB 4.5*.**

### Exercising the right to cancel

- 4.6.5 R A *retail customer* who has a right to cancel a *distance mortgage mediation contract* may, without giving any reason, cancel the contract by serving notice on the *firm*, before the expiry of the cancellation period in *MCOB 4.6.4R* either:
- (1) **by serving on, or otherwise sending by post, notice to the *firm's* last known address, addressed to the *firm*, its *appointed representative* or on any agent of the *firm* with authority to accept notice on the *firm's* behalf; or**

- (2) in accordance with any other practical instructions for exercising that right provided to the *retail customer* in accordance with *MCOB 4 Ann 3R(5)*.

4.6.6 R Where the notice of cancellation is in a *durable medium* and is served in accordance with *MCOB 4.6.5R*, it must be treated as being served on the *firm* on the date it is despatched by the *retail customer*.

4.6.7 G In the event of any dispute, unless there is clear written evidence to the contrary, the *firm* should treat the date cited by the *retail customer* as being the date when notice was given, posted or otherwise sent.

#### Effects of cancellation

4.6.8 R By exercising a right to cancel under *MCOB 4.6.4R* the *retail customer* withdraws from the contract and the entire contract is terminated.

4.6.9 G Regulation 11 (Automatic cancellation of an attached distance contract) of the *Distance Marketing Regulations*, has the effect that when notice of cancellation is given in relation to a contract, that notice also operates to cancel any attached contract, which is also a distance financial services contract. An example of such an attached contract might be a *distance non-investment insurance contract*.

4.6.10 R When a *retail customer* exercises a right to cancel under *MCOB 4.6.4R*:

(1) the *firm* must:

(a) pay to the *retail customer* without delay, and no later than 30 days after the date on which the *firm* received notice of cancellation from him, any sums which he has paid to or for the benefit of the *firm* in connection with the contract (including sums paid by the *retail customer* to agents of the *firm*) except for the amount referred to in (b);

(b) subject to (c), the *firm* is permitted to require the *retail customer* to pay for the services it has actually provided in connection with the contract; the amount payable, however, must be in accordance with the sums which the *retail customer* agreed to pay and must not:

(i) exceed an amount which is in proportion to the extent of the service already provided to the *retail customer* by the *firm*; and

(ii) be such that it could be construed as a penalty;

- (c) sub-paragraph (b) applies only if:
- (i) where performance of the contract has commenced before expiry of the cancellation period, this was requested by the *retail customer*; and
  - (ii) the *firm* can demonstrate that the *retail customer* was provided with details of the amount which he may be required to pay if exercising his right to cancel in accordance with *MCOB 4 Ann 3R(5)*.
- (2) The *firm* is entitled to receive without delay, and no later than 30 days after the date on which the *retail customer* posted or otherwise sent notice of cancellation to the *firm* any property that became the *retail customer's* under the contract and any sums payable to the *firm* under (1)(b).

#### Record keeping

4.6.11 R Where notice of cancellation has been served on a *firm* (or its *appointed representative* or agent), the *firm* must make and retain a record (which includes a copy of any receipt of notice issued to the *retail customer* and the *retail customer's* original notice instructions) for three years from the date when the *firm* first became aware that notice of cancellation had been served.

4.7 Advised sales

#### Suitability

4.7.1 G *Principle 9* requires a *firm* to take reasonable care to ensure the suitability of its advice. In accordance with that *principle*, a *firm* should take reasonable steps to obtain from a *customer* all information likely to be relevant for the purposes of *MCOB 4.7*.

4.7.2 R A *firm* must take reasonable steps to ensure that it does not make a *personal recommendation* to a *customer* to enter into a *regulated mortgage contract*, or to vary an existing *regulated mortgage contract*, unless the *regulated mortgage contract* is, or after the variation will be, suitable for that *customer* (see *MCOB 4.3.4R(2)*, *MCOB 4.3.5G* and *MCOB 4.3.6G*).

4.7.3 R In *MCOB 4.7*, a reference to a recommendation to enter into a *regulated mortgage contract* is to be read as including a reference to a recommendation to vary an existing *regulated mortgage contract* if the context so requires.

4.7.4 R For the purposes of *MCOB 4.7.2R*:

- (1) a *regulated mortgage contract* will be suitable if, having regard to the facts disclosed by the *customer* and other relevant facts about the *customer* of which the *firm* is or should reasonably be aware, the *firm* has reasonable grounds to conclude that:
  - (a) the *customer* can afford to enter into the *regulated mortgage contract*;
  - (b) the *regulated mortgage contract* is appropriate to the needs and circumstances of the *customer*; and
  - (c) the *regulated mortgage contract* is the most suitable of those that the *firm* has available to it within the scope of the service provided to the *customer*;
- (2) no recommendation must be made if there is no *regulated mortgage contract* from within the scope of the service provided to the *customer* which is appropriate to his needs and circumstances; and
- (3) if a *firm* is dealing with an existing *customer* in *arrears* and has concluded that there is no suitable *regulated mortgage contract* for the purposes of *MCOB 4.7.2R*, the *firm* must nonetheless have regard to *MCOB 13.3.2E(1)(a)*, (e) and (f) (see also *MCOB 13.3.4G(1)(a)* and (b)).

4.7.5 R In relation to *MCOB 4.7.4R(1)(a)*, a *firm* must explain to the *customer* that the assessment of whether he can afford to enter into a *regulated mortgage contract* is based on:

- (1) current interest rates, which might rise in the future; and
- (2) the *customer's* current circumstances, which might change in the future.

4.7.6 R In relation to *MCOB 4.7.4R(1)(a)* and (b), where a *firm* makes a *personal recommendation* to a *customer* to enter into a *regulated mortgage contract* where a main purpose is to consolidate existing debts it must also take account of the following, where relevant, in assessing whether the *regulated mortgage contract* is suitable for the *customer*:

- (1) the costs associated with increasing the period over which a debt is to be repaid;
- (2) whether it is appropriate for the *customer* to secure a previously unsecured loan; and
- (3) where the *customer* is known to have payment difficulties, whether it would be more appropriate for the *customer* to

negotiate an arrangement with his creditors than to take out a *regulated mortgage contract*.

- 4.7.7 E (1) In assessing whether a *customer* can afford to enter into a particular *regulated mortgage contract*, a *firm* should give due regard to the following:
- (a) information that the *customer* provides about his income and expenditure, and any other resources that he has available;
  - (b) any likely change to the *customer's* income, expenditure or resources; and
  - (c) the costs that the *customer* will be required to meet once any discount period in relation to the *regulated mortgage contract* comes to an end (on the assumption that interest rates remain unchanged).
- (2) Contravention of *MCOB 4.7.7E(1)* may be relied upon as tending to show contravention of *MCOB 4.7.4R(1)(a)*.
- 4.7.8 G A *firm* may generally rely on any information provided by the *customer* for the purposes of *MCOB 4.7.4R(1)(a)* unless, taking a common-sense view of this information, it has reason to doubt it.
- 4.7.9 G *MCOB 4.7.4R(3)* explains that different considerations apply when making a *personal recommendation* to a *customer* in arrears. For example, the circumstances of the *customer* may mean that, viewed as a new transaction, a *customer* could not be recommended to enter into a *regulated mortgage contract*. In such cases, a *firm* will still be able to make a *personal recommendation* to that *customer* where this recommendation is, in the circumstances, a more suitable one than the *customer's* existing *regulated mortgage contract*.
- 4.7.10 G In complying with *MCOB 4.7.4R* a *firm* is not required to consider whether it would be preferable for the *customer* to:
- (1) purchase a property by using his own resources, rather than by borrowing under a *regulated mortgage contract*;
  - (2) rent a property, rather than purchase one; or
  - (3) delay entering into a *regulated mortgage contract* until a later date (on the grounds that property prices would have fallen in the intervening period, or that the interest rate in relation to the *regulated mortgage contract* would be lower, or both).
- 4.7.11 E (1) In assessing whether the *regulated mortgage contract* is appropriate to the needs and circumstances of the *customer* for the purposes of *MCOB 4.7.4R(1)(b)*, a *firm* should give due regard to the following:

- (a) whether the *customer's* requirements meet the eligibility criteria for the *regulated mortgage contract* (for example, the amount that the *customer* wishes to borrow, or the loan-to-value ratio);
- (b) whether the *customer* should have an *interest-only mortgage*, a *repayment mortgage*, or a combination of the two;
- (c) whether the *customer* has a preference for a particular term;
- (d) whether the *customer* has a preference or need for stability in the amount of required payments, especially having regard to the impact on the *customer* of significant interest rate changes in the future;
- (e) whether the *customer* has a preference or need for payments to be reduced at the outset (for example, a loan with an initial discount rate period);
- (f) whether the *customer* intends to make early repayments; and
- (g) whether the *customer* has a preference or need for any other features of a *regulated mortgage contract* (for example, payment holidays).

(2) Compliance with (1) may be relied upon as tending to show compliance with *MCOB 4.7.4R(1)(b)*.

4.7.12

G

(1) *MCOB 4.7.11E(1)(b)* does not require a *firm* to provide *advice on investments*. Whether such *advice* should be given will depend upon the individual needs and circumstances of the *customer*. Where considered relevant, *MCOB 4* does not restrict the ability of an adviser to refer the *customer* to another source of *investment advice* (for example, where the adviser is not qualified to provide *advice on investments*).

(2) Where the scope of the *advice* provided is restricted (within the meaning of *MCOB 4.3.1R(1)(b)* or (c)), *MCOB 4.7.4R(2)* means that the assessment of suitability should not be limited to the types of *regulated mortgage contracts* which the *firm* offers. *MCOB 4.7.4R(2)* prevents a *firm* recommending the 'least worst' *regulated mortgage contract* where the *firm* does not have access to products appropriate to the *customer's* needs and circumstances. It means, for example, that a *firm* dealing solely in the sub-prime market should not recommend one of these *regulated mortgage contracts* if approached for *advice* by a *customer* with an unblemished credit record.



- 4.7.13 E (1) **A *firm* should, out of all the *regulated mortgage contracts* identified as being appropriate for that *customer*, recommend the one that is the least expensive for that *customer* taking into account those pricing elements identified by the *customer* as being most important to him.**
- (2) **Compliance with (1) may be relied upon as tending to show compliance with *MCOB 4.7.4R(1)(c)*.**
- 4.7.14 G (1) With regard to *MCOB 4.7.13E(1)* different *customers* are likely to identify different pricing elements as being of most importance. For example, it may be the overall cost, the cost over the first five years, or the absence of *early repayment charges* that a *customer* considers most important.
- (2) *MCOB 4.7.13E(1)* does not prevent a *firm* from making a recommendation on other grounds. For example, it would be open to a *firm* to have regard to the speed or quality of service of different *mortgage lenders*, the policies of *mortgage lenders* on further lending or capital repayments, the underwriting stance of *mortgage lenders* or the *customer's* wish for a *regulated mortgage contract* that is compliant with Sharia law. The obligation to satisfy *MCOB 4.7.4R(1)(c)* remains the same in such cases.
- (3) If circumstances arise in which a *firm* has reasonable grounds to conclude that there are several *regulated mortgage contracts* that would satisfy the suitability requirement in *MCOB 4.7.4R*, the *firm* will act in conformity with that *rule* if it recommends only one of those *regulated mortgage contracts*.
- (4) If for any reason a *customer* rejects a recommendation made by a *firm* (for example, on the grounds that the *mortgage lender* selected is unknown to him), the *firm* can make a further recommendation (in accordance with the requirements of *MCOB 4.7*) where there remains a *regulated mortgage contract* that is appropriate to the needs and circumstances of the *customer*.

#### Rejected recommendations

- 4.7.15 R (1) **If a *customer* has:**
- (a) **rejected all of the *personal recommendations* made by a *firm* and requested information instead on a *regulated mortgage contract* that the *firm* does not consider suitable (and therefore could not recommend to the *customer* in accordance with *MCOB 4.7.2R*); and**

- (b) been issued with a new initial disclosure document in accordance with *MCOB 4.4.1R* or *MCOB 4.4.7R*;

the *firm* may be able to provide information on that *regulated mortgage contract* in the light of the information on which the *personal recommendations* in (1) were made.

- (2) If the *firm* needs to ask further questions regarding the needs and circumstances of the *customer* to be able to provide information on that *regulated mortgage contract*, the *firm* must obtain that information by asking scripted questions (in accordance with *MCOB 4.8.1R*).

4.7.16 G A *firm* may consider it prudent to record any cases where, after all *personal recommendations* it has made to a *customer* have been rejected, it changes the nature of the service it provides (as in *MCOB 4.7.15R*) and provides the *customer* with information about a *regulated mortgage contract*.

#### Record keeping

- 4.7.17 R (1) A *firm* must make and retain a record:
- (a) of the *customer* information, including that relating to the *customer's* needs and circumstances, that it has obtained for the purposes of *MCOB 4.7*; and
  - (b) that explains why the *firm* has concluded that any *personal recommendation* given in accordance with *MCOB 4.7.2R* satisfies the suitability requirements in *MCOB 4.7.4R(1)*. This explanation must include, where this is the case, the reasons why a *personal recommendation* has been made on a basis other than that described in *MCOB 4.7.13E(1)*.
- (2) The record in (1) must be retained for a minimum of three years from the date on which the *personal recommendation* was made.

#### 4.8 Non-advised sales

4.8.1 R If a *firm* arranges a *regulated mortgage contract* without giving a *personal recommendation*, it must ensure that all the questions it asks the *customer* about the *customer's* needs and circumstances are scripted in advance.

4.8.2 G (1) *MCOB 2.2.6R* (Clear, fair and not misleading communications) applies to information provided to a *customer* in a non-advised sale, that is a sale of a *regulated mortgage contract* by a *firm* where the *firm* has not made a *personal recommendation* to the *customer* to enter into that particular *regulated mortgage contract*. In providing information on only a selection of the

*regulated mortgage contracts* that it deals with, a *firm* will need to ensure that the selection is fair and unbiased. Where the non-advised sales process leads to the identification of only one *regulated mortgage contract*, a *firm* should have regard to the *guidance* on scripted questions in *AUTH* App 4.6.21G to 4.6.25G.

- (2) In the course of a non-advised sale a *firm* may decide that a *customer* is considering a *regulated mortgage contract* that is inappropriate for that particular *customer*. Firms should note that, in such circumstances, although they are not providing *advice* to the *customer*, they are still conducting a *regulated activity* and are subject to the high level standards, including *PRIN. Principle 6* (Customers' interests) requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. A *firm* selling what it considered to be an inappropriate product, would be in breach of *Principle 6* as it would be conducting a *regulated activity* without regard to the *customer's* interests. In the *FSA's* opinion, the appropriate course in such cases would be for the *firm* to tell the *customer* to seek *advice*.

**4.8.3 R** Where *MCOB 4.8.1R* applies, the *firm* must ensure that staff using the scripted questions are:

- (1) **trained in the use of the script;**
- (2) **trained in the difference between what constitutes a *personal recommendation* and what does not; and**
- (3) **instructed not to give a *personal recommendation* unless they meet the *TC* requirements for *advising on regulated mortgage contracts*.**

**4.8.4 R** A *firm* must take reasonable steps to supervise staff who do not meet the *TC* requirements for *advising on regulated mortgage contracts* so that:

- (1) **they do not give *personal recommendations*; and**
- (2) **when using scripted questions to comply with *MCOB 4.8.1R*, they adhere to the script in all material respects.**

**4.8.5 G** (1) Scripted questions should be clear, fair and not misleading.

- (2) A *firm* should ensure that the number of supervisory staff should be adequate for the size of the sales team, and supervisors should have the technical knowledge, assessment skills and coaching skills to act as a supervisor.

**4.8.6 G** A *firm* which, after using scripted questions to help a *customer* select a *regulated mortgage contract*, makes a *personal recommendation* about

a *regulated mortgage contract* to that *customer* will need to follow the *rules* governing the provision of *advice* in *MCOB 4* (including, but not limited to, the suitability requirements in *MCOB 4.7*).

### Record keeping

- 4.8.7 R (1) A *firm* must make, and keep up to date, a record of the scripted questions required by *MCOB 4.8.1R*. The record must be made on the date on which the scripted questions are first used.
- (2) The record in (1) must be retained for one year from the date on which it was superseded by a more up-to-date record.

### 4.9 Business loans

4.9.1 R For the purposes of the *rules* in *MCOB 4* there is one market in *regulated mortgage contracts* for a business purpose. Within this market, a *firm* should describe its scope of service in accordance with *MCOB 4.3.1R*.

4.9.2 G Where a *personal recommendation* is provided in connection with a *regulated mortgage contract* for a business purpose it is recognised that there may be additional considerations beyond those described in *MCOB 4.7.11E* as part of the assessment of whether the *regulated mortgage contract* is appropriate to the needs and circumstances of the *customer*.

### Initial disclosure document

4.9.3 G As explained in *MCOB 4.4.3G(1)* the requirement to provide an initial disclosure document is only triggered where the *firm* has identified the possibility that it will be giving personalised information or *advice* to a *customer* on a *regulated mortgage contract* for a business purpose.

4.9.4 G (1) *Firms* are reminded that *MCOB 1.2.7R* enables them to substitute an alternative for ‘mortgage’ in the initial disclosure document (except in relation to sections 6 and 8 of any initial disclosure document provided in accordance with *MCOB 4.4.1R(1)(c)(i)* or sections 5 and 8 of any initial disclosure document provided in accordance with *MCOB 4.4.1R(1)(c)(ii)*).

(2) *MCOB 1.2.7R* also means that a *firm* must amend the initial disclosure document in *MCOB 4 Ann 1R* so that the final sentence of prescribed text in section 4 states:

“You will receive an illustration which will tell you about any fees relating to a particular [term used by the firm to describe the borrowing, for example ‘mortgage’]”.

- (3) Where the initial disclosure document makes reference to the permitted business of a *firm* (for example, sections 6 and 8 of the initial disclosure document may refer to a *firm* advising on or arranging mortgages) a *firm* can add text explaining the relevance of these descriptions. One approach may be to add an additional sentence such as:

“Secured overdrafts are referred to here as ‘mortgages’ because they involve a charge being taken over your property”.

**Non-advised sales**

- 4.9.5 R** ***MCOB 4.8.1R does not apply in relation to a regulated mortgage contract for a business purpose.***

This Annex belongs to MCOB 4.4.1R(1)

*Firms* must omit the notes and square brackets that appear in the following IDD. The IDD must contain the ‘key facts’ logo, headings and text in the order shown and in accordance with the Notes. [Note 1]

## **key facts** about our mortgage services [Note 2]

**XYZ** FINANCIAL SERVICES  
[Note 3] [Note 4]

[Note 5]  
[123 Any Street  
Some Town  
ST21 7QB]

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### 1. The Financial Services Authority (FSA)

The FSA is the independent watchdog that regulates financial services. It requires us to give you this document. Use this information to decide if our services are right for you.

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### 2. Whose mortgages do we offer? [Note 6] [Note 7]

- We offer mortgages from the whole market.
- We [can] [Note 8] only offer mortgages from a limited number of lenders. Ask us for a list of the lenders we offer mortgages from. [Note 9]
- We [can] [Note 8] only offer [a limited range of the] mortgages from [a single lender] [name of single lender]. [Note 10]  
[or]  
[Name of lender] [can] only offer its own mortgages. [Note 11]

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### 3. Which service will we provide you with? [Note 6]

- We will advise and make a recommendation for you after we have assessed your needs.
- You will not receive advice or a recommendation from us. We may ask some questions to narrow down the selection of products that we will provide details on. You will then need to make your own choice about how to proceed.

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### 4. What will you have to pay us for this service? [Note 6]

- No fee [we will be paid by commission from the lender]. [Note 12]
- A fee [of £[ ] payable at the outset and £[ ] payable when you apply for a mortgage]. [Note 12] [Note 13]

You will receive a key facts illustration which will tell you about any fees relating to a particular mortgage

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**5. Refund of fees [Note 14] [Note15]**

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If we charge you a fee, and your mortgage does not go ahead, you will receive:

- A full refund [if the lender rejects your application]. **[Note 16]**
- A refund of £[ ] [if the purchase falls through]. **[Note 16] [Note 17]**
- No refund [if you decide not to take out a mortgage]. **[Note 16]**

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**6. Who regulates us? [Note 18]**

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[XYZ Financial Services] [123 Any Street, Some Town ST21 7QB] **[Note 19] [Note 5]** is authorised **[Note 20]** and regulated by the Financial Services Authority. Our FSA register number is [ ].

**[or]**

[Name of appointed representative] **[Note 4]** is an appointed representative of [name of *firm*] [123 Any Street, Some Town ST21 7QB] **[Note 19] [Note 5]** which is authorised and regulated by the Financial Services Authority. [Name of *firm*]'s FSA registration number is [ ].

Our permitted business is [advising on and arranging mortgages.] **[Note 21]**

You can check this on the FSA's Register by visiting the FSA's website [www.fsa.gov.uk/register/](http://www.fsa.gov.uk/register/) or by contacting the FSA on 0845 606 1234.

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**7. What to do if you have a complaint [Note 18]**

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If you wish to register a complaint, please contact us:

...in writing Write to: [XYZ Financial Services], [Complaints Department, 123 Any Street, Some Town, ST21 7QB].

... by phone Telephone [0121 100 1234]. **[Note 22]**

If you cannot settle your complaint with us, you may be entitled to refer it to the Financial Ombudsman Service.

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**8. Are we covered by the Financial Services Compensation Scheme (FSCS)? [Note 18] [Note 23]**

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We are covered by the FSCS. You may be entitled to compensation from the scheme if we cannot meet our obligations. This depends on the type of business and the circumstances of the claim.

Mortgage advising and arranging is covered for 100% of the first £30,000 and 90% of the next £20,000 so the maximum compensation is £48,000.

Further information about compensation scheme arrangements is available from the FSCS.

The following notes do not form part of the IDD.

**Note 1** - subject to this, a *firm* may use its own house style and brand.

**Note 2** – the *Financial Services Authority* has developed a common ‘key facts’ logo to be used on significant pieces of information directed to *customers*. The ‘key facts’ logo and the text “about our mortgage services” must be used and positioned as shown on the IDD. The logo may be re-sized, but it must be reasonably prominent and its proportions must not be distorted. When reproducing the logo, *firms* may use colour providing this does not diminish the prominence of the logo.

**Note 3** – insert the *firm* or *appointed representative's* name (either the name under which it is *authorised* or the name under which it trades). A corporate logo or logos may be included.

**Note 4** – if the IDD is provided by an *appointed representative*, insert the name of the *appointed representative*. (If an individual who is employed or engaged by an *appointed representative* provides the information, the individual should not put his or her own name on the IDD.)

**Note 5** - insert the head office or if more appropriate the principal place of business from where the *firm* or *appointed representative* expects to conduct business with *customers*. (An *appointed representative* must not include the name and address of the *authorised firm* instead of its own)

## **Section 2: Whose mortgages do we offer?**

**Note 6** - *firms* must select, for example by ticking, the box which is appropriate for the service that they expect to provide to the *customer*.

**Note 7** – if the IDD is provided by an *appointed representative*, the service described must be that offered by the *appointed representative*, in accordance with *MCOB* 4.3.10R.

**Note 8** - insert “can” if the *firm's* range of *regulated mortgage contracts* is determined by any contractual obligation.

**Note 9** – this sentence may be omitted if the *firm* chooses to list all of the lenders it offers mortgages from instead of the text “a limited number of lenders”, in the previous line, so long as the *firm* offers all of the mortgages generally available from each lender.

**Note 10** – if the *firm* selects this box, it must insert the name of the lender. If the *firm* does not select this box, it must insert the words “a single lender” instead. If the *firm* does not offer all of the mortgages generally available from that lender, it must insert the words “a limited range of”, as shown. If the lender only has one mortgage product, the *firm* should amend the text to “We can only offer a mortgage from [name of single lender].”

**Note 11** – if the *firm* is a *mortgage lender* offering only its own mortgages, or is part of a *mortgage lender* offering only the mortgages sold under that part’s trading name, it may use this alternative text.



#### **Section 4: What will you have to pay us for this service?**

**Note 12** – if the *firm* receives commission instead of, or in addition to, *fees* from the *customer*, it must insert a plain language explanation of this.

**Note 13** – insert a plain language description of when any *fees* are payable. This description could include, for example, a cash amount, a percentage of the loan amount or the amount per hour, as appropriate. However, where a cash amount is not disclosed, one or more examples of the cash amount must be included. If the *firm* offers more than one pricing option, it may illustrate each with a separate box.

#### **Section 5: Refund of fees**

**Note 14** – if, in section 4, it has been indicated that there will be ‘No fee’, section 5 may be omitted altogether, and the following sections re-numbered accordingly.

**Note 15** – firms must select as many boxes as are appropriate.

**Note 16** – insert a plain language description of the circumstances in which the *fee* is refundable or not refundable as described.

**Note 17** – the *firm* may delete this line if it does not offer a partial refund in any circumstances

#### **Section 6: Who regulates us?**

**Note 18** – these sections may be omitted in accordance with *MCOB* 4.4.1R(3).

**Note 19** – where the *authorised firm* trades under a different name from that under which it is *authorised*, it must include the name under which it is *authorised* and listed on the *FSA* register. It may also include its trading name if it wishes.

**Note 20** - An *incoming EEA firm* will need to modify this section if it chooses to use this *IDD* (see *GEN* 4 Ann 1R(2)).

**Note 21** - insert a plain language description of the business for which the *firm* has *permission* in relation to *regulated mortgage contracts*.

#### **Section 7: What to do if you have a complaint**

**Note 22** - if different to the address in **Note 5**, give the address and telephone number that is to be used by *customers* wishing to complain.

#### **Section 8: Are we covered by the Financial Services Compensation Scheme (FSCS)?**

**Note 23** – when an *incoming EEA firm* provides the *IDD*, it may modify this section as appropriate.

**MCOB 4: Advising and selling**

**Annex 2 R**

**This Annex belongs to *MCOB 4.4.1R(1)***

[Rules and guidance for the combined IDD, for use where mortgage services are being provided at the same time as investment or insurance services, will be added here.]

**1 Table Additional information requirements in respect of distance mortgage mediation contracts with retail customers**

This table belongs to *MCOB 4.5.2R*

<b>Additional information for distance contracts with retail customers</b>	
<b>All the contractual terms and conditions on which the service will be provided including, in particular, the following information:</b>	
<b>(1)</b>	<b>where the <i>firm</i> has a representative established in the <i>retail customer's EEA State</i> or other country of residence, the identity of that representative and the geographical address relevant to the <i>retail customer's</i> relations with him;</b>
<b>(2)</b>	<b>where the <i>retail customer's</i> dealings are with any professional other than the <i>firm</i>, the identity of that professional, the capacity in which he is acting with respect to the <i>retail customer</i>, and the geographical address relevant to the <i>retail customer's</i> relations with that professional;</b>
<b>(3)</b>	<b>in relation to the contract:</b>  <b>(a) any limitations of the period for which the information provided is valid;</b>  <b>(b) in relation to services performed permanently or recurrently, the minimum duration of the contract;</b>
<b>(4)</b>	<b>in relation to the cost of the service:</b>  <b>(a) notice of the possibility that other taxes or costs may exist that are not paid through the <i>firm</i> or imposed by it; and</b>  <b>(b) any specific additional cost to the <i>retail customer</i>, if any, for using a <i>means of distance communication</i>;</b>

**Additional information for distance contracts with retail customers**

<p><b>(5)</b></p>	<p>the existence or absence of a right to cancel. Where there is such a right:</p> <ul style="list-style-type: none"><li><b>(a)</b> its duration and the conditions for exercising the right to cancel, including information on the amount which the <i>retail customer</i> may be required to pay (or which may not be returned to the <i>retail customer</i>) if the contract is terminated early or unilaterally under its terms;</li><li><b>(b)</b> the consequences of not exercising the right to cancel; and</li><li><b>(c)</b> practical instructions for exercising the right to cancel, including as a minimum the method in <i>MCOB 4.6.5R(1)</i>, details of the address to which the cancellation notice should be sent and the fact that the notice must clearly indicate, however expressed, the <i>retail customer's</i> intention to cancel the contract; and</li></ul>
<p><b>(6)</b></p>	<p>details of:</p> <ul style="list-style-type: none"><li><b>(a)</b> the <i>EEA State</i> or <i>States</i> whose laws are taken by the <i>firm</i> as a basis for the establishment of relations with the <i>customer</i> prior to the conclusion of the <i>regulated mortgage contract</i>;</li><li><b>(b)</b> any contractual clause on law applicable to the <i>regulated mortgage contract</i> or on competent court, or both; and</li><li><b>(c)</b> the language in which the contract is supplied and in which the <i>firm</i> will communicate during the course of the <i>regulated mortgage contract</i>.</li></ul>

## 5 PRE-APPLICATION DISCLOSURE

### 5.1 Application

Who?

5.1.1 R This chapter applies to a *firm* in a category listed in column (1) of the table in *MCOB 5.1.2R* in accordance with column (2) of that table.

5.1.2 R Table

This table belongs to *MCOB 5.1.1R*

(1) Category of firm	(2) Applicable section
<i>mortgage lender</i>  <i>mortgage adviser</i>  <i>mortgage arranger</i>	whole chapter

What?

5.1.3 R (1) This chapter applies if a *firm*:

- (a) makes a *personal recommendation* to a *customer* to enter into a *regulated mortgage contract*; or
- (b) provides information to a *customer* that is specific to the amount that the *customer* wants to borrow on a particular *regulated mortgage contract*, including information provided in response to a request from a *customer*; or
- (c) provides the means for a *customer* to make an application to it;

in connection with entering into, or agreeing to enter into, a *regulated mortgage contract* provided by a *mortgage lender*, other than a *regulated lifetime mortgage contract* or a variation to an existing *regulated mortgage contract*.

(2) In relation to further advances and other variations, *MCOB 7* (Disclosure at start of contract and after sale) applies in place of *MCOB 5*, regardless of whether they are variations to an existing *regulated mortgage contract*, or are such that they involve the *customer* entering into a new *regulated mortgage contract*.

(3) **In relation to a regulated lifetime mortgage contract, MCOB 9 (Lifetime mortgage disclosure) applies in place of MCOB 5.**

5.1.4 G The table in MCOB 5.1.5G shows how the relevant *rules* and *guidance* in MCOB 5.6 apply to certain types of *regulated mortgage contracts*.

5.1.5 G This table belongs to MCOB 5.1.4G.

Type of Mortgage	Requirements that do not apply	Additional or alternative requirements
Multi-part mortgages	MCOB 5.6.42R(3) MCOB 5.6.46R	MCOB 5.6.28R MCOB 5.6.54R – MCOB 5.6.57G
Foreign currency mortgages	N/A	MCOB 5.6.127R – MCOB 5.6.128R
Shared appreciation mortgages	N/A	MCOB 5.6.129R – MCOB 5.6.131R
Deferred interest rate mortgages	N/A	MCOB 5.6.132R
Mortgages without a term or regular payment plan	MCOB 5.6.31R MCOB 5.6.40R – MCOB 5.6.57R MCOB 5.5.59R – MCOB 5.6.65R	MCOB 5.6.32R MCOB 5.6.134R – MCOB 5.6.145R

5.1.6 R **In this chapter, references to a regulated mortgage contract include, where the context requires, references to arrangements which are capable of becoming a regulated mortgage contract.**

5.1.7 G (1) MCOB 5.1.3R means that this chapter applies where the *customer* can apply to enter into a *regulated mortgage contract*. This includes circumstances where, for example, the means to apply is provided in person, by telephone, through a website or through an application pack sent through the post.

(2) The effect of this chapter is to require a *customer* to be provided with an *illustration* before he submits an application to a *mortgage lender*.

5.1.8 G Although an *illustration* is a *financial promotion* in respect of the *controlled activity* of providing *qualifying credit*, the effect of MCOB 3.2.5R(1), section 145(3) of the *Act* (Financial promotion rules) and article 28 of the *Financial Promotion Order* (One off non-real time

communications and solicited real time communications) is that an *illustration* is exempt from the provisions of *MCOB 3* (Financial promotion).

- 5.1.9 G Where part of the loan is not a *regulated mortgage contract*, for example it is a linked unsecured loan, the details of this loan can be shown in Section 12 of the *illustration* as an additional feature. It should not be added to the *regulated mortgage contract* loan amount in *MCOB 5.6.6R(2)*.
- 5.1.10 G A *firm* that finds any *rule* in *MCOB 5.6* (Content of illustrations) inappropriate for the particular kind of *regulated mortgage contract* that the *mortgage lender* provides will need to seek from the *FSA* a *waiver* of that *rule*. *SUP 8* contains details of the *waiver* procedure.

## 5.2 Purpose

- 5.2.1 G
- (1) *MCOB 5* amplifies *Principle 7*, which requires a *firm* to pay due regard to the information needs of its *customers* and to treat them fairly.
  - (2) The purpose of *MCOB 5* is to ensure that, before a *customer* submits an application for a particular *regulated mortgage contract*, he is supplied with information that makes clear:
    - (a) the features of that *regulated mortgage contract*;
    - (b) the price that the *customer* will be required to pay under that *regulated mortgage contract*, to enable the *customer* to assess whether it is affordable to him; and
    - (c) any *linked deposits*, any *linked borrowing* and any *tied products*.
  - (3) *MCOB 5* requires information to be disclosed in a consistent way to facilitate comparison between *regulated mortgage contracts* provided by different *mortgage lenders*.

## 5.3 Applying for a regulated mortgage contract

- 5.3.1 R **A mortgage lender must not enter into a regulated mortgage contract, or agree to do so, with a customer unless the customer has submitted an application for that particular regulated mortgage contract.**
- 5.3.2 G The purpose of *MCOB 5.3.1R*, taken in conjunction with other rules in this chapter, is to ensure that the *customer* has received details of the particular *regulated mortgage contract* for which he has applied, in the form of an *illustration*, and has had the opportunity to satisfy himself that it is appropriate for him. The application should identify the type of interest rate, rate of interest, and the *mortgage lender* at the point it

is submitted by the *customer* (for how to describe interest rates see *MCOB 5.6.26R* and *MCOB 5.6.27R*).

**5.4 Illustrations: general**

**Clear, fair and not misleading**

**5.4.1 R** A *firm* must be able to show that it has taken reasonable steps to ensure that any *illustration* it issues is clear, fair and not misleading.

**Accuracy**

**5.4.2 R** An *illustration* on a particular *regulated mortgage contract* issued by, or on behalf of a *mortgage lender*, must be an accurate reflection of the costs of the *regulated mortgage contract*.

**5.4.3 R** A *mortgage intermediary* must take reasonable steps to ensure that an *illustration* which it issues, or which is issued on its behalf, other than that provided by a *mortgage lender*:

**(1)** is accurate within the following tolerances:

**(a)** no more than one percent or £1, whichever is the greater, below the actual figures charged by the *mortgage lender* for the following:

**(i)** the *total amount payable* in Section 5 of the *illustration*;

**(ii)** the amount payable for every £1 borrowed in Section 5 of the *illustration*;

**(iii)** the amounts that the *customer* must pay by regular instalment in Section 6 of the *illustration* (or in Section 7 of the *illustration* for an interest rate with a floor or a ceiling); and

**(iv)** the amount by which the regular instalment would increase following a one percentage point increase in interest rates in Section 7 of the *illustration*;

**(b)** the *APR* in Section 5 of the *illustration* cannot be understated by more than 0.1%; and

**(2)** except in the case of conveyancing fees and insurance premiums (where estimates may be used), is absolutely accurate in respect of other figures quoted in the *illustration* including fees payable to the *mortgage lender* or *mortgage intermediary* in Section 8 of the *illustration* and cash



**examples of early repayment charges in Section 10 of the illustration.**

- 5.4.4 G Given that the *APR* is presented as a percentage, and must be rounded to one decimal place in accordance with *MCOB* 10 (Annual Percentage Rate), *firms* should note that the tolerance allowed for the *APR* in *MCOB* 5.4.3R(1)(b) means that, for example, where the actual *APR* is 5.0% the quoted *APR* must be no lower than 4.9%, or where the actual *APR* is 16.0%, the quoted *APR* must be no lower than 15.9%.
- 5.4.5 G There are no restrictions on figures which are quoted as higher than those actually charged by the *mortgage lender* although this should not be purposely done in order to make one *regulated mortgage contract* look more expensive than another.
- 5.4.6 G It is the responsibility of a *mortgage intermediary* to ensure compliance with *MCOB* 5.4.3R. However, where a *firm* can show that it was reasonable for it to rely on information provided to it by another *person*, other than the *mortgage lender*, that an *illustration* was within the tolerances described in *MCOB* 5.4.3R, he may be able to rely on *MCOB* 2.5.2R, if this turns out not to be the case.
- 5.4.7 G An *offer document* may not always exactly match the *illustration* provided before application even when the loan requirements have not changed. For example, where a fixed rate has a defined end date, the *total amount payable* may be different because the number of payments at the fixed rate has reduced assuming a later date at which the *regulated mortgage contract* will start.

**Illustrations where customer ineligible**

- 5.4.8 R **A *firm* must not issue an *illustration* to a *customer* for a *regulated mortgage contract* for which the *customer* is clearly ineligible on the basis of the information that the *firm* has obtained from the *customer* or the *mortgage lender's* lending criteria.**
- 5.4.9 G The purpose of *MCOB* 5.4.8R is not to require a *firm* to ascertain whether a *customer* is eligible for a particular *regulated mortgage contract* before providing an *illustration*. Instead, the purpose is to ensure that the *firm* takes into account the information it has obtained from the *customer* before providing an *illustration* to the *customer*.

**Explaining the importance of an illustration**

- 5.4.10 R **In providing an *illustration* to a *customer*, a *firm* must explain to the *customer* the importance of reading the *illustration* and understanding it.**
- 5.4.11 G A *firm* may satisfy *MCOB* 5.4.10R by drawing the *customer's* attention orally to the importance of reading and understanding the *illustration*, for example in a face to face meeting, or by referring to its importance

in a covering letter or electronic communication or other written information that accompanies the *illustration*.

**Form of an illustration**

- 5.4.12 R **Any *illustration* provided to a *customer* by a *firm* must be in a *durable medium*.**

**Restriction on provision of information**

- 5.4.13 R **A *firm* must not provide a *customer* with information that is specific to the amount that the *customer* wants to borrow on a particular *regulated mortgage contract* except in the following circumstances:**

- (1) **when it is in the form of an *illustration*;**
- (2) **when it is provided on screen, for example a computer screen;**
- (3) **when supplementary information which is not contained within an *illustration* is provided after or at the same time as an *illustration*; or**
- (4) **when it is provided orally, for example by telephone.**

- 5.4.14 R **Where *MCOB* 5.4.13R(2) applies:**

- (1) **if the *customer* initiates the accessing of quotation information on screen (for example, by using the internet or interactive television), the following warning must be displayed prominently on each page on screen:**

**“This information does not contain all of the details you need to choose a mortgage. Make sure that you read the separate key facts illustration before you make a decision.”;**  
and

- (2) **a *firm* must not provide a customised print function where the information on the screen would not be in the form of an *illustration* if the information were printed in hard copy.**

- 5.4.15 R **Where *MCOB* 5.4.13R(3) applies, supplementary information must only be provided when it does not significantly duplicate information provided in the *illustration*.**

- 5.4.16 G *MCOB* 5.4.13R places no restrictions on the provision of information that is not specific to the amount the *customer* wants to borrow, for example, marketing literature including generic mortgage repayment tables or graphs illustrating the benefits of making a regular overpayment on a flexible mortgage. Such literature may, however,

constitute a *qualifying credit promotion* and be subject to the provisions of *MCOB 3* (Financial promotion).

5.4.17 G Where *MCOB 5.4.13R(2)* and *MCOB 5.4.13R(4)* apply, *firms* should encourage the *customer* to obtain a copy of an *illustration* in a *durable medium*. This could be done, for example, if the information was contained on the *firm's* website, by a prompt which asked the *customer* whether he wished to print off an *illustration*.

5.4.18 R (1) **Unless (2) applies, where *MCOB 5.4.13R(2)* or *MCOB 5.4.13R(4)* apply, a *firm* must provide the means for the *customer* to obtain an *illustration* as soon as practicable, through a delivery channel acceptable to the *customer*.**

(2) **A *firm* does not need to provide an *illustration* if the *customer* refuses to disclose key information (for example, in a telephone conversation, his name or a communication address) or where the provision of an *illustration* is not appropriate, for example, because on the basis of discussions undertaken the *customer* is ineligible given the *mortgage lender's* lending criteria, or is not interested in pursuing the enquiry.**

#### Record keeping

5.4.19 R **A *firm* must make an adequate record of each *illustration* that it issues to a *customer* in accordance with *MCOB 5.5.1R* where the *customer* applies for that particular *regulated mortgage contract*.**

5.4.20 R **The record required by *MCOB 5.4.19R* must be retained for a year from the date of the application made by the *customer*.**

5.4.21 G *MCOB 5.4.19R* does not require a *firm* to keep records of *illustrations* that are issued to a *customer* where the *customer* does not apply to enter into that particular *regulated mortgage contract*.

5.4.22 G The record maintained in accordance with *MCOB 5.4.19R* should contain or refer to matters such as:

- (1) the date on which the *illustration* was provided to the *customer*;
- (2) the date of the application made by the *customer*; and
- (3) details of the medium through which the *illustration* was provided.

#### Tied products

5.4.23 R **Where the *illustration* provided to the *customer* does not contain an accurate quotation or a reasonable estimate of the payments the *customer* will need to make in connection with any *tied product* that**

**the *customer* must take out with the *regulated mortgage contract*, and the *customer* applies for that *regulated mortgage contract*:**

- (1) the *firm* must provide the *customer* with an accurate quotation as soon as possible after he has applied, and in good time before the *offer document* is provided;**
- (2) the *customer* has a right to withdraw his application for the *regulated mortgage contract* for a period of seven days from receipt of the quotation referred to in (1);**
- (3) the quotation for the *tied product* must be accompanied by a notice explaining that the *customer* can withdraw his application and receive a full refund of any fees paid in connection with the application for that *regulated mortgage contract* (excluding any fees paid in respect of the *regulated activity of arranging or advising on a regulated mortgage contract* by a *mortgage lender* or a *mortgage intermediary*) for a period of seven days from receipt of the quotation or acceptance of the *mortgage lender's* offer if sooner; and**
- (4) the *firm* must refund any fees paid by the *customer* (excluding any fees paid in respect of any advice provided by a *mortgage lender* or a *mortgage intermediary*) if the *customer* decides to exercise his right to withdraw his application in accordance with (2).**

5.4.24 G The *rules* on the content of an *illustration* at MCOB 5.6 (Content of illustrations) mean that if the *regulated mortgage contract* requires the *customer* to take out a *tied product*, the *illustration* must include an accurate quotation or a reasonable estimate of the payments the *customer* would need to make for the *tied product* (see MCOB 5.6.52R(2) on a *repayment vehicle* that is a *tied product* and MCOB 5.6.74R on insurance that is a *tied product*). If it is not possible to include this cost information in the *illustration*, MCOB 5.4.23R requires that the *customer* be provided with an accurate quotation of the payments associated with the *tied product* as soon as possible. If the quotation is provided after the *customer* has applied for the *regulated mortgage contract* the *customer* has the right to a refund of fees if he withdraws his application.

## 5.5 Provision of illustrations

### Timing

5.5.1 R (1) **A *firm* must provide the *customer* with an *illustration* for a *regulated mortgage contract* before the *customer* submits an application for that particular *regulated mortgage contract* to a *mortgage lender*, unless an *illustration* for that particular *regulated mortgage contract* has already been provided.**

- (2) **A firm must provide the customer with an illustration for a regulated mortgage contract when any of the following occurs, unless an illustration for that regulated mortgage contract has already been provided:**
- (a) **the firm makes a personal recommendation to the customer to enter into one or more regulated mortgage contracts, in which case an illustration must be provided at the point the recommendation is made (and illustrations for all recommended regulated mortgage contracts must be provided), unless the personal recommendation is made by telephone, in which case the firm must provide an illustration within 5 business days;**
  - (b) **the firm provides written information that is specific to the amount that the customer wants to borrow on a particular regulated mortgage contract; or**
  - (c) **the customer requests written information from the firm that is specific to the amount that the customer wants to borrow on a particular regulated mortgage contract, unless the firm does not wish to do business with the customer.**
- (3) **Subject to MCOB 5.5.4R, the firm may comply with (1) and (2) by providing an offer document containing an illustration, if this can be done as quickly as providing an illustration.**

- 5.5.2 G The effect of the requirements at MCOB 5.3.1R and MCOB 5.5.1R(1) is that if a customer's application to enter into a regulated mortgage contract with a mortgage lender, made via a mortgage intermediary, is subsequently passed by that mortgage intermediary to another mortgage lender, then the mortgage intermediary must ensure that the application is amended and the customer is provided with an illustration for the other mortgage lender's regulated mortgage contract before the application is passed to the other mortgage lender.
- 5.5.3 G If a firm chooses to issue an offer document in place of an illustration in accordance with MCOB 5.5.1R(3), it will need to comply with MCOB 6.4 (Content of the offer document), and in particular with MCOB 6.6 (Offer documents in place of illustrations).
- 5.5.4 R **A firm must not accept fees, commission a valuation, or undertake any other action that commits the customer to an application until the customer has had the opportunity to consider an illustration.**
- 5.5.5 G The effect of the requirements at MCOB 5.5.1R(1) and MCOB 5.5.4R is that a customer will be deemed to be committed to an application if, for example, he pays a product related fee (including a valuation fee)

or provides electronic or verbal authority to process an application. It is not necessary for a *customer* to provide a *mortgage lender* with a completed application form to submit an application for a *regulated mortgage contract*.

- 5.5.6 G Subject to *MCOB 5.5.1R* and *MCOB 5.5.15R* when an *illustration* is requested without delay, a *firm* may perform an internal credit score and obtain information on the *customer's* credit record from a credit reference agency (subject to the consent of the *customer*), in order to provide a *customer* with an approval in principle for a *regulated mortgage contract*, without having to provide an *illustration*.
- 5.5.7 R **The *firm* dealing directly with the *customer* is responsible for ensuring compliance with the content and timing requirements, that is, a *mortgage lender* is not responsible for ensuring that a *customer* has received an *illustration* before accepting an application from a *mortgage intermediary*.**
- 5.5.8 R **Where a *firm* has already provided an *illustration* in accordance with *MCOB 5.5.1R* and the terms for the proposed *regulated mortgage contract* are subsequently materially altered, the *firm* must ensure that the *customer* is provided with a revised *illustration*, before acting on the amendment, when the change occurs at the point at which a *customer* submits an application for the *regulated mortgage contract*.**
- 5.5.9 G What constitutes 'materially altered' requires consideration of the facts of each individual case. For example, a change of product such that the underlying terms and conditions of the *regulated mortgage contract* have changed should normally be regarded as material, as would an additional charge, such as a *higher lending charge*, applying to the *regulated mortgage contract* when it did not previously.
- 5.5.10 G Unless the *customer* requests a revised *illustration*, a *firm* is not required to provide one if the *customer* has already submitted an application, and an amendment is made subsequently. The *mortgage lender* should however ensure that any amendment is reflected in the *offer document*.

#### **Uncertainty whether a mortgage is regulated**

- 5.5.11 R (1) **If, at the point an *illustration* must be provided in accordance with *MCOB 5.5.1R*, a *firm* is uncertain whether the contract will be a *regulated mortgage contract*, the *firm* must:**
- (a) provide an *illustration*; or
  - (b) seek to obtain from the *customer* information that will enable the *firm* to ascertain whether the contract will be a *regulated mortgage contract*.

- (2) Where (1)(b) applies, an *illustration* must be provided, unless, on the basis of the information the *customer* provides, the *firm* has reasonable evidence that the contract is not a *regulated mortgage contract*.

5.5.12 G If the *firm* has reasonable evidence that the contract is not a *regulated mortgage contract* and has not provided an *illustration* before a *customer* submits an application, and it is subsequently found that the contract is a *regulated mortgage contract*, there is no requirement to provide a separate *illustration* at that stage. However, the requirement to integrate an *illustration* into the *offer document* at MCOB 6.4.1R will apply.

**No preference between repayment and interest-only**

5.5.13 R If the *customer* expresses no preference between a *repayment mortgage* and an *interest-only mortgage*, the *firm* must:

- (1) provide an *illustration* for a *repayment mortgage* (except where the *firm* does not provide *repayment mortgages*, in which case it must provide only an *illustration* for an *interest-only mortgage*); and
- (2) make the *customer* aware that it has provided the *illustration* on this basis.

**Providing an illustration without delay in response to a customer request**

5.5.14 G Where the *customer* requests written information from the *firm* that is specific to the amount that the *customer* wants to borrow on a particular *regulated mortgage contract* under MCOB 5.5.1R(2)(c), the purpose of MCOB 5.5.15R, MCOB 5.5.16R and MCOB 5.5.17G is to ensure that the *customer* receives an *illustration* without unnecessary delay. These requirements do not restrict the information that the *firm* may obtain from the *customer* after it has provided the *customer* with an *illustration*.

5.5.15 R In meeting a request under MCOB 5.5.1R(2)(c), the *firm* must not delay the provision of the *illustration* by requesting information other than:

- (1) the information necessary to personalise the *illustration* in accordance with MCOB 5.6.6R, if the *firm* does not already know it;
- (2) where the *firm* acts in accordance with MCOB 5.5.11R(2), such information as is necessary to ascertain whether or not the contract will be a *regulated mortgage contract*;
- (3) where the *regulated mortgage contract* involves any *linked deposits* and the *firm* chooses to provide an example in the

*illustration* in accordance with *MCOB 5.6.109R(2)* or *MCOB 5.6.110R(2)*, or both, such information as is necessary to produce the example;

- (4) where the interest rates, payments or any other terms and conditions to be included in the *illustration* are dependent on the *customer's* credit record, such information as is necessary to produce an *illustration*;
- (5) where the *firm* includes a quotation for any *tied products* or compulsory insurance in the *illustration*, such information as is necessary to produce those quotations;
- (6) where the *customer* agrees to receive a quotation for insurance in the *illustration* (other than that provided for in (5)), such information as is necessary to produce those quotations; and
- (7) any of the following information where it affects the availability of the *regulated mortgage contract* that the *customer* has requested information on or affects the information to be included in the *illustration*:
  - (a) whether the *customer* is a first-time buyer, a subsequent buyer moving home or entering into a *regulated mortgage contract* without moving home;
  - (b) whether the *regulated mortgage contract* is required for a right-to-buy purchase or for a shared ownership purchase;
  - (c) whether the *customer* needs to self-certify his income;
  - (d) the location of the property to be purchased, where known; and
  - (e) whether the terms are dependent on a third party guarantee.

5.5.16 R Where *MCOB 5.5.15R(4)* applies:

- (1) a *firm* must ask the *customer* relevant questions about his credit history or obtain information on his credit record from a credit reference agency;
- (2) a credit reference agency must not be used unless:
  - (a) it would be quicker than asking the *customer* the relevant questions about his credit history; or
  - (b) the *customer* is not able to provide sufficient information on his credit history.



- 5.5.17 G A *firm* may use information that it already holds on the *customer* for the purpose of producing the *illustration* (for example, if it already holds the *customer's* credit record), providing the use of this information does not delay the *customer* receiving the *illustration* and the *customer's* consent is obtained where appropriate.
- 5.5.18 R **If, on the basis of the information obtained from the *customer* or on the basis of information that the *firm* already holds on the *customer*, the *firm* would do business with the *customer*, but not on the terms requested, the *firm* may provide the *customer* with an *illustration* in respect of a different *regulated mortgage contract* if it chooses to do so.**
- 5.6 **Content of illustrations**
- Purpose
- 5.6.1 G *MCOB 5.6* sets out the required content of an *illustration* provided to a *customer* by a *firm*.
- Content, order, format etc
- 5.6.2 R **An *illustration* provided to a *customer* must:**
- (1) **contain the material set out in *MCOB 5 Ann 1R* in the order and using the numbered section headings, sub-headings and prescribed text in *MCOB 5 Ann 1R*, except where provided for in *MCOB 5.6*;**
  - (2) **follow the layout of the template in *MCOB 5 Ann 1R* with:**
    - (a) **prominent use of the 'key facts' logo followed by the text 'about this mortgage' (if a *firm* resizes the logo it must ensure that the proportions remain consistent with the original design, so as not to distort it in any way);**
    - (b) **each section clearly separated;**
    - (c) **all the amounts to be paid in Sections 5, 6, 8 and 9 in columns that make the amounts of the payments clear; and**
    - (d) **no section split across different pages except where it is impractical not to do so;**
  - (3) **use font sizes and typefaces consistently throughout the *illustration* which are sufficiently legible so that the *illustration* can be read easily by a typical *customer*;**

- (4) ensure that the information within each section is clearly laid out (for example, through the use of bullet points or similar devices to separate information);
- (5) include prominent headings with the numbered section headings clearly differentiated in some way from the other text in the *illustration* (for example, through the use of larger and more prominent fonts, the use of shading or colour);
- (6) replace '[name of *mortgage lender*]' with the name of the *mortgage lender* providing the *regulated mortgage contract*: a trading name used by the *mortgage lender* may be stated, as long as the name of the *mortgage lender* is also disclosed in Section 4 of the *illustration* in accordance with *MCOB 5.6.25R(1)*;
- (7) describe any *early repayment charge* as an 'early repayment charge' and not use any other expression to describe such charges; and
- (8) describe any *higher lending charge* as a 'higher lending charge' and not use any other expression to describe such charges.

5.6.3 R Section 13 in *MCOB 5 Ann 1R* is required only where the *illustration* is provided to the *customer* by, or on behalf of, a *mortgage intermediary*. If this is not the case, Section 14 must be renumbered Section 13.

- 5.6.4 G
- (1) *Firms* can obtain from the *FSA* website <http://www.fsa.gov.uk> a specimen of the 'key facts' logo. When reproducing the logo *firms* may use colour providing this does not diminish the prominence of the logo.
  - (2) *MCOB 5.6.2R(3)* does not prevent the use of different fonts and typefaces for headings and risk warnings. Its purpose is to prevent particular sections of the *illustration* from being made less prominent than other sections through the inconsistent use of font sizes and typefaces.
  - (3) The *illustration* can contain the *mortgage lender's* or *mortgage intermediary's* logo and other 'brand' information, so long as the requirements of *MCOB 5.6* are satisfied.
  - (4) The *illustration* can contain page numbers and other references that aid understanding, record keeping and identification of a particular *illustration*, such as the date and time an *illustration* is produced or a unique reference number, provided these do not detract from the content of the *illustration*.

- (5) *Firms* are reminded of their general obligation for communications to *customers* to be clear, fair and not misleading. Sections of the *illustration* may be split across pages where it is practical to do so. When splitting sections, *firms* should split the section at an appropriate place, for example at the end of a sub-section, and not split tables or risk warnings.

**Content: required information**

- 5.6.5 R The *illustration* provided to *customers* must:
- (1) contain only the material prescribed in *MCOB 5.6* and no other material except where provided for elsewhere in *MCOB 5.6*; and
  - (2) be in a document separate from any other material that is provided to the *customer*.
- 5.6.6 R As a minimum the *illustration* must be personalised to reflect the following requirements of the *customer*:
- (1) the specific *regulated mortgage contract* in which the *customer* is interested;
  - (2) the amount of the loan required;
  - (3) the price or value of the property on which the *regulated mortgage contract* would be secured (estimated where necessary);
  - (4) the term of the *regulated mortgage contract* (where the *customer* is unable to suggest a date at which he expects to repay the loan, for example in the case of an open-ended secured bridging loan, secured overdraft or *mortgage credit card*, then a term of 12 months must be assumed and this assumption stated); and
  - (5) whether the *regulated mortgage contract* is to be an *interest-only mortgage* or a *repayment mortgage* or a combination of the two.
- 5.6.7 G A *firm* should not illustrate more than one *regulated mortgage contract* in the same *illustration*, for example by using one *illustration* to compare alternative products, repayment methods or repayment terms.
- 5.6.8 G In relation to *MCOB 5.6.6R(3)*, in order for the *firm* to comply with the principle of “clear, fair and not misleading” in *MCOB 2.2.6R*, an estimated valuation, where the estimated valuation is not that provided by the *customer*, must be a reasonable assessment based on all the facts available at the time. For example, an overstated valuation could enable a more attractive *regulated mortgage contract* to be illustrated

on the basis of a lower ratio of the loan amount to the property value – for example, one with a lower rate of interest, or without a *higher lending charge*.

- 5.6.9            **R**        **The amount referred to in *MCOB 5.6.6R(2)* is:**
- (1)        **in cases where on the basis of the information obtained from the *customer* before providing the *illustration* it is clear that the *customer* would not be eligible to borrow the amount he requested, an estimate of the amount that the *customer* could borrow based on the information obtained from the *customer*; or**
  - (2)        **where the *regulated mortgage contract* is a revolving credit agreement such as a secured overdraft or *mortgage credit card*, the total borrowing that the *firm* is willing to provide under the *regulated mortgage contract*; or**
  - (3)        **where it is known that the loan will be released in instalments, for example in the case of a self-build mortgage, the total amount of the loan required and not the amount of the initial instalment.**
- 5.6.10           **G**        *Firms* are reminded that they must comply with *MCOB 7.6.5R* in respect of the release of loan instalments after the start of the *regulated mortgage contract*.
- 5.6.11           **G**        *MCOB 5.6.6R* sets out minimum requirements. The *illustration* may be personalised to a greater degree if the *mortgage lender* or *mortgage intermediary* wishes, subject to the restrictions on the information that can be obtained from the *customer* in *MCOB 5.5.15R* when the *illustration* is provided in accordance with *MCOB 5.5.1R(2)(c)*.
- 5.6.12           **G**        *MCOB 5.6.9R(1)* does not require information to be obtained from the *customer* before providing an *illustration* in order to ascertain the amount the *customer* is eligible to borrow. Instead, its purpose is to avoid a *firm* being in a position where it would otherwise have to provide a *customer* with an *illustration* for an amount it knew the *customer* would not be eligible for, based on whatever information it had obtained from the *customer* before providing the *illustration*.
- 5.6.13           **R**        **Where the *illustration* relates to a *regulated mortgage contract* that is sub-divided into different parts with different types of interest rate or different rates of interest or different conditions, or a combination of these, the requirements in *MCOB 5.6* may be adapted to accommodate this. The adaptations made must be limited to those that are necessary.**
- 5.6.14           **G**        (1)        *MCOB 5.6.13R* applies where, for example, the *illustration* covers a *regulated mortgage contract* that is:

- (a) divided so that a certain amount of the loan is payable on a fixed interest rate, and a certain amount on a discounted interest rate; or
  - (b) a combination of a *repayment mortgage* and an *interest-only mortgage* and the loan is subdivided into different types of interest rate and/or different rates of interest.
- (2) *MCOB 5.6.13R* does not apply where an *illustration* covers a *regulated mortgage contract* that is a combination of a *repayment mortgage* and an *interest-only mortgage* and the rate of interest charged, mortgage term and other conditions are the same. The treatment of such mortgages is covered in the relevant rules.

**Information to be included at the head of the illustration**

**5.6.15 R At the head of the *illustration*, the following information must be included:**

- (1) the *customer's* name;
- (2) the date of issue of the *illustration*;
- (3) details of how long the *illustration* is valid and whether there is any date by which the *regulated mortgage contract* covered by the *illustration* needs to commence (for example, where a fixed interest rate is only available if the *regulated mortgage contract* commences before a certain date); and
- (4) the prescribed text at the head of the illustration in *MCOB 5 Annex 1R*.

**Section 1: 'About this illustration'**

**5.6.16 R Under the section heading 'About this illustration', the prescribed text in *MCOB 5 Annex 1R* under this heading must be included.**

**Section 2: 'Which service are we providing you with?'**

- 5.6.17 R**
- (1) Unless (2) applies, under the section heading 'Which service are we providing you with?' the prescribed text in *MCOB 5 Annex 1R* under this heading must be included, with a 'check box' for each statement, one of which must be marked prominently to indicate the level of service provided to the *customer*.
  - (2) If the level of service described in the *illustration* is provided by another *firm*, (1) may be replaced by the following:

Under the section heading ‘Which service are we providing you with?’ the following text should be presented as two options, with a ‘check box’ for each option, one of which must be marked prominently to indicate the level of service provided to the *customer*:

“[name of *firm*] recommends, having assessed your needs, that you take out this mortgage.

[name of *firm*] is not recommending a particular mortgage for you. However, based on your answers to some questions, it is giving you information about this mortgage so that you can make your own choice”.

### Section 3: ‘What you have told us’

- 5.6.18 R (1) Under the section heading ‘What you have told us’, the *illustration* must state the information that has been obtained from the *customer* under *MCOB 5.6.6R* (apart from *MCOB 5.6.6R(1)* which is provided for in Section 4 of the *illustration*), and can include brief details of any other information that has been obtained from the *customer* and used to produce the *illustration*.
- (2) If the amount on which the *illustration* is based includes the amount that the *customer* wants to borrow plus charges and other payments that have been added to the loan:
- (a) except where (b) applies, this section must include the following text after the loan amount from *MCOB 5.6.6R(2)*:
- “plus £[insert total amount of fees and other charges added to the loan] for fees that will be added to the loan – see Section 8 for details.”; or
- (b) where there are other fees or charges that the *customer* must pay that have not been added to the loan, this section must include the following text after the loan amount from *MCOB 5.6.6R(2)*:
- “plus £[insert total amount of fees and other charges added to the loan] for fees that will be added to the loan. These and the additional fees that you need to pay are shown in Section 8.”
- (3) If the amount on which the *illustration* is based includes the amount that the *customer* wants to borrow plus insurance premiums (other than a *higher lending charge* or where the premium is repaid over a term of 12 months or less) that have been added to the loan:

- (a) except where (b) applies, this section must include the following text after the loan amount from *MCOB 5.6.6R(2)* (which may be combined with the prescribed text in (2) if applicable):

“plus £[insert amount of premium to be added to the loan] for insurance premiums that will be added to the loan – see Section 9 for details.”; or

- (b) where there are other insurance premiums that the *customer* must pay that have not been added to the loan, this section must include the following text after the loan amount from *MCOB 5.6.6R(2)* (which may be combined with the prescribed text in (2) if applicable):

“plus £[insert amount of premium to be added to the loan] for insurance premiums that will be added to the loan. These and any additional insurance premiums that you need to pay are shown in Section 9.”

- (4) If the amount on which the *illustration* is based does not involve any charges or payments being added to the amount to be borrowed, but there are charges that must be paid by the *customer*, Section 3 of the *illustration* must include the following text after the loan amount from *MCOB 5.6.6R(2)*:

“No fees have been added to this amount but the fees you need to pay are shown in Section 8.”

- (5) If the *regulated mortgage contract* on which the *illustration* is based has no charges or payments that must be paid by the *customer* (that is, there are no fees to pay in Section 8), and no insurance premiums are being added to the loan, Section 3 of the *illustration* must include the following text after the loan amount from *MCOB 5.6.6R(2)*:

“We do not charge any fees for this mortgage.”

5.6.19

R Where the same *illustration* covers a *regulated mortgage contract* that is a combination of a *repayment mortgage* and an *interest-only mortgage*, either:

- (1) Section 3 of the *illustration* must state the amount the *customer* wishes to borrow as a *repayment mortgage* and the amount required as an *interest-only mortgage*; or
- (2) Section 3 of the *illustration* must summarise the repayment method as partly an *interest-only mortgage* and partly a *repayment mortgage*, and Section 4 of the *illustration* must

state the amount the *customer* wishes to borrow as a *repayment mortgage* and the amount required as an *interest-only mortgage*.

- 5.6.20 R Where the same *illustration* covers a *regulated mortgage contract* that has different parts of the loan over a different term (that is, the final repayment date of the loan parts are different), either:
- (1) Section 3 of the *illustration* must state the amount repayable over each term; or
  - (2) Section 3 of the *illustration* must state the longest term that applies and Section 4 of the *illustration* must state the amount repayable over each term.
- 5.6.21 R For the purpose of illustrating to the *customer* the repayment method in Section 3 or Section 4 of the *illustration*, or the cost of the *regulated mortgage contract* in Section 5 of the *illustration*, if the *illustration* covers a *regulated mortgage contract* that is a combination of more than one interest-only part on the same product terms but with different repayment dates, the *illustration* must either treat it as one part by assuming the longest term, or alternatively treat it as a multi-part loan.
- 5.6.22 R At the end of Section 3 of the *illustration* a statement must be included making clear that changes to any of the information obtained from the *customer*, and where appropriate to the valuation of the property, could alter the details elsewhere in the *illustration*, and encouraging the *customer* to ask for a revised *illustration* in this event.
- 5.6.23 G An example of the type of statement that would satisfy *MCOB* 5.6.22R is:
- “The valuation that will be carried out on the property and changes to any of the information you have given us could alter the information in this illustration. If this is the case please ask for a revised illustration.”
- 5.6.24 G The purpose of the *illustration* is to provide the *customer* with details of the cost of borrowing the amount required over the term specified in *MCOB* 5.6.6R(2) and *MCOB* 5.6.6R(4). Section 12 has been designed specifically to illustrate any additional features of the *regulated mortgage contract* such as a linked current account, a linked savings account or the availability of *unsecured lending*. These features should therefore be shown in Section 12 and not in Section 3 of the *illustration*.
- Section 4: ‘Description of this mortgage’**
- 5.6.25 R Under the section heading ‘Description of this mortgage’ the *illustration* must:



- (1) state the name of the *mortgage lender* providing the *regulated mortgage contract* to which the *illustration* relates (a trading name used by the *mortgage lender* may also be stated in accordance with *MCOB 5.6.2R(6)*), and the name, if any, used to market the *regulated mortgage contract*;
- (2)
  - (a) provide a description of the interest rate type and rate of interest that applies in accordance with the format described in *MCOB 5.6.26R* and *MCOB 5.6.27R*;
  - (b) where there is more than one interest rate type or rate of interest, specify the amount of the loan to which each interest rate type and rate of interest applies;
  - (c) unless the interest rate applies for the full term of the loan, confirm what interest rate will apply, when it will apply and for how long it will apply after any initial interest rate ends, in accordance with the format described in *MCOB 5.6.26R* and *MCOB 5.6.27R*; and
  - (d) provide a clear explanation of the charging approach where different interest rates are applied to different items of debt (for example, for a *mortgage credit card* where a different interest rate applies to balances that are transferred from that charged on any additional borrowing);
- (3) where *MCOB 5.6.20R(2)* applies, state the different amounts repayable and the different terms over which the amounts are repayable;
- (4) where *MCOB 5.6.19R(2)* applies, state the amount repayable under an *interest-only mortgage* and the amount repayable under a *repayment mortgage*;
- (5) include the following text if the *regulated mortgage contract* meets the Government's mortgage CAT standards:
 

“This mortgage meets the Government's CAT standards. Further information on mortgage CAT standards is available from the FSA ([www.fsa.gov.uk/consumer](http://www.fsa.gov.uk/consumer)) or by calling 0845 606 1234.”;
- (6) if the *customer* is obliged to buy any *tied products* or to take out a linked current account, a linked savings account or any *linked borrowing* under the *regulated mortgage contract*, include:

- (a) details of the products required; and
- (b) the following text:

“You are obliged to take out [insert details of the product(s)] through [insert name of *mortgage lender* or if relevant, name of *mortgage intermediary*] as a condition of this mortgage. Please refer to Section [insert applicable section number e.g. 6 or 9] of this illustration for further details.”;

- (7) state very briefly any restrictions that apply to the availability of the *regulated mortgage contract* (for example, if it is only available to certain types of *customer* or for certain types of loan);
- (8) where the interest rate, payments or terms and conditions of the *regulated mortgage contract* in the *illustration* reflect a *customer’s* adverse credit history, include the following text:  
  

“The terms of this mortgage reflect past or present financial difficulties.”; and
- (9) where the intention of the *regulated mortgage contract* is solely to provide the *customer* with a *mortgage credit card* (rather than the *mortgage credit card* being an additional feature of a *regulated mortgage contract*) include the warning about the loss of statutory rights from *MCOB 5.6.102R(2)* in Section 4 of the *illustration* rather than Section 12.

5.6.26 R *MCOB 5.6.27R* sets out some examples of descriptions of interest rate types and rates of interest which must be used in the *illustration* to comply with *MCOB 5.6.25R(2)*. If an interest rate is not described in *MCOB 5.6.27R*, it must be presented in the *illustration* in a way that is consistent with the descriptions in *MCOB 5.6.27R*.

5.6.27 R Description of interest rate types and rates of interest.

This table belongs to *MCOB 5.6.26R*:

<b>Description of the interest rate</b>	<b>Amount payable in each instalment</b>
<b>Lender’s base mortgage rate – must be described as the [Lender]’s standard variable rate, currently X% [where applicable insert the date at which the interest rate ends or period for which the interest rate applies].</b>	<b>Amount based on X%.</b>
<b>Fixed rate – must be described as a fixed rate of X% [where applicable insert the date at which the interest rate ends or the period for which the interest rate applies].</b>	<b>Amount based on the fixed rate of X%.</b>
<b>Discounted rate – must be described as a variable rate currently X% with a discount of Y% [where applicable insert the date at which the discount ends or the period for which the discount applies], giving a current rate payable of Z%.</b>	<b>Amount based on Z%.</b>
<b>Capped rate – must be described as a variable rate currently X% which will not go above a ceiling of Y% [where applicable insert the date at which the capped interest rate ends or the period for which the capped interest rate applies].</b>	<b>Amount based on the current interest rate payable (X%).</b>
<b>Capped and collared – must be described as a variable rate currently X%, which will not go below a floor of Y%, or above a ceiling of Z% [where applicable insert the date at which the capped and collared interest rate ends or the period for which the capped and collared interest rate applies].</b>	<b>Amount based on the current interest rate payable (X%).</b>
<b>Tracker rate – must be described as a variable rate which is [X% above/X% below/the same as] [insert interest rate tracked, currently Z%] [where applicable insert the date at which the rate ends or the period for which the interest rate applies], to give a current rate payable of Y%. Details should also be provided of how soon after an interest rate change the mortgage interest rate is adjusted.</b>	<b>Amount based on Y%.</b>
<b>Deferred rate – must be described as a variable rate currently X% where Y% is not paid now but is added to your mortgage [where applicable insert the date at which the deferred interest rate ends or the period for which the deferred interest rate applies], to give a current rate payable of Z%.</b>	<b>Amount based on Z%.</b>
<b>Stepped rate where different interest rates apply over different time periods (for example, fixed interest rate in year 1 changes in year 2). Each element should be dealt with individually as above.</b>	<b>Amount for each of the ‘steps’.</b>

Combinations of the above must be treated in the same way as the descriptions above, (for example, if a discounted interest rate has a ‘floor’ then it must be described as such).

Follow the above treatment depending on the combination.

- 5.6.28 R Where the loan under the *regulated mortgage contract* is divided into more than one part (for example where part of the loan is a fixed interest rate and part of the loan is a discounted variable interest rate) and the *firm* displays this in a tabular format in the *illustration*:
- (1) the following text must be used to introduce the table “As this mortgage is made up of more than one part, these parts are summarised below:”;
  - (2) each part must be numbered for ease of reference in the *illustration*;
  - (3) the ‘initial rate payable’ must be displayed separately from the interest rate description;
  - (4) the loan amounts must be totalled; and
  - (5) immediately following the table, a statement of what interest rates will apply to each part, (and when they will apply) after any initial interest rate ends in accordance with *MCOB 5.6.25R(2)(c)*.
- 5.6.29 R Further information about the *regulated mortgage contract* may be included in Section 4 of the *illustration* as long as it does not significantly:
- (1) duplicate information contained elsewhere in the *illustration*; and
  - (2) extend the length of this section.
- 5.6.30 G An example of further information that may be included in accordance with *MCOB 5.6.29R* might be that an ‘approval in principle’ has been granted subject to valuation and satisfactory credit reference.
- Section 5: ‘Overall cost of this mortgage’
- 5.6.31 R Under the section heading ‘Overall cost of this mortgage’ where the *regulated mortgage contract* has an agreed term for repayment and a regular payment plan (that is, it is not a revolving credit agreement such as a secured overdraft or *mortgage credit card*, or a *regulated mortgage contract* where all of the interest rolls up, such as an open-ended bridging loan):
- (1) the following text must be included in the *illustration*:

“The overall cost takes into account the payments in Sections 6 and 8 below.”;

- (2) if all of the *regulated mortgage contract* to which the *illustration* relates is an *interest-only mortgage*, the following text must follow the text in (1):

“However, it excludes any payments that you may need to make into a separate savings plan, to build up a lump sum to repay the amount borrowed, but assumes that you pay off the amount borrowed as a lump sum at the end of the mortgage.”;

- (3) where all of the *regulated mortgage contract* is a *repayment mortgage*, the following text must follow the text in (1):

“With a repayment mortgage you gradually pay off the amount you have borrowed, as well as the interest, over the life of the mortgage.”;

- (4) if part of the *regulated mortgage contract* to which the *illustration* relates is an *interest-only mortgage*, and part is a *repayment mortgage*, the following text must follow the text in (1):

“However, it excludes any payments that you may need to make into a separate savings plan to build up a lump sum to repay the amount borrowed on an interest-only basis, but assumes that you pay off the amount borrowed on an interest-only basis, as a lump sum at the end of the mortgage.”; and

- (5) reference must be made to any other payments that have been included in the *APR* but not included in Sections 6 and 8 of the *illustration* if these are relevant to the *regulated mortgage contract* that is the subject of the *illustration*.

5.6.32 R Under the section heading ‘Overall cost of this mortgage’ where the *regulated mortgage contract* has no agreed term for repayment, (and a 12 month term has been assumed), or no regular payment plan, or both (for example, a revolving credit agreement such as a secured overdraft or *mortgage credit card* or a *regulated mortgage contract* where all the interest rolls up such as an open-ended bridging loan):

- (1) the following text must be included in the *illustration*:

“The overall cost takes into account the payments in Sections 6 and 8 below.”;

- (2) where all the interest on the *regulated mortgage contract* rolls up and is repaid as a lump sum at the end of the

*regulated mortgage contract*, for example a secured bridging loan, then the following text must follow the text in (1):

**“It assumes that you pay back the total amount owing as a lump sum at the end of the mortgage term.”;**

- (3) where the *regulated mortgage contract* is a revolving credit agreement and no regular payments are made, for example a secured overdraft, then the following text must follow the text in (1):

**“It assumes that you borrow the maximum amount available, and pay back the total amount owing, as a lump sum at the end of the mortgage term.”;**

- (4) where the *regulated mortgage contract* is a revolving credit agreement and regular minimum payments are made, for example, a *mortgage credit card*, then the following text must follow the text in (1):

**“It assumes that you borrow the maximum amount available, make regular payments of the minimum amount, and pay back the remaining amount owing as a lump sum at the end of the mortgage term.”; and**

- (5) reference must be made to any other payments that have been included in the *APR* but not included in Sections 6 and 8 of the *illustration* if these are relevant to the *regulated mortgage contract* that is the subject of the *illustration*.

5.6.33 G *MCOB* 5.6.31R(5) and *MCOB* 5.6.32R(5) would require, for example, a reference to the fact that the overall cost takes into account mortgage payment protection insurance where this is required as a condition of the *regulated mortgage contract* to which the *illustration* relates. The requirement to take out such insurance must be stated in Sections 4 and 9 of the *illustration* in accordance with *MCOB* 5.6.25R(6), *MCOB* 5.6.74R or *MCOB* 5.6.77R.

5.6.34 R The following text must be included after the text required by *MCOB* 5.6.31R or *MCOB* 5.6.32R with the relevant cost measures shown in the right-hand column of Section 5 in accordance with the layout shown in *MCOB* 5 Ann 1R:

- (1) **“The total amount you must pay back, including the amount borrowed is £[insert *total amount payable*]”;**
- (2) **“This means you pay back £ [insert the *total amount payable* divided by the amount on which the *illustration* is based from *MCOB* 5.6.6R(2)] for every £1 borrowed”;** and
- (3) **“The overall cost for comparison is [insert the *APR*] % *APR*”.**

- 5.6.35 R (1) The *APR* and the *total amount payable* in *MCOB 5.6.34R* must be calculated on the basis of information obtained from the *customer* under *MCOB 5.6.6R*.
- (2) Where there is a charge to be included in the *APR* and *total amount payable* and the precise amount of that charge is not known at the time that the *illustration* is provided, *MCOB 10.3* (Formula for calculating the *APR*) sets out a number of relevant assumptions to be used. If the method for including the charge is not addressed in *MCOB 10* (Annual Percentage Rate), the charge must be estimated based on information which is known to be representative of the *regulated mortgage contract* to which the *illustration* relates.
- (3) Where all the interest rolls up and is repaid as a lump sum at the end of the *regulated mortgage contract*, as, for example, in case of a secured bridging loan, the *APR* and *total amount payable* must be based on the total amount that the *customer* would owe at the end of the term.
- (4) Where the *regulated mortgage contract* is a revolving credit agreement and regular payments are made, for example, a *mortgage credit card*, then the *APR* and *total amount payable* must be based on the maximum amount that the *customer* could borrow and take into account any amounts that must be paid in regular instalments.
- 5.6.36 G In relation to *MCOB 5.6.35R(2)*, the cost of conveyancing would be an example of a charge for which representative information may need to be used in the calculation of the *APR* and the *total amount payable*.
- 5.6.37 R At the end of Section 5 of the *illustration* the following text must be included:
- (1) unless the interest rate is fixed throughout the term of the *regulated mortgage contract*:
- “The figures in this section will vary following interest rate changes and if you do not keep the mortgage for [insert term from *MCOB 5.6.6R(4)*].”; and
- (2) (a) where the *regulated mortgage contract* is a *repayment mortgage*:
- “Only use the figures in this section to compare the cost with another repayment mortgage.”; or
- (b) where the *regulated mortgage contract* is an *interest-only mortgage*:
- “Only use the figures in this section to compare the cost with another interest-only mortgage.”; or

- (c) where the *regulated mortgage contract* is a combination of a *repayment mortgage* and an *interest-only mortgage*:

**“Only use the figures in this section to compare the cost with another mortgage that has the same proportions of the loan on repayment and interest-only as this one.”**

- 5.6.38 G The purpose of the *illustration* is to provide the *customer* with details of the cost of borrowing the amount required over the term specified from *MCOB 5.6.6R(2)* and *MCOB 5.6.6R(4)*. Section 12 has been designed specifically to allow examples of the effect of any additional features of the *regulated mortgage contract* such as a linked current account or a linked savings account. Examples of these features should therefore be shown in Section 12 and not in Section 5 or Section 6 of the *illustration*.
- Section 6: ‘What you will need to pay each [insert frequency of payments from *MCOB 5.6.40R*]’
- 5.6.39 R *MCOB 5.6.40R* to *MCOB 5.6.57G* do not apply to loans without a term or regular payment plan where some or all of the interest rolls up, for example secured bridging loans, secured overdrafts or *mortgage credit cards*. In these cases, *MCOB 5.6.134R* to *MCOB 5.6.138G* apply.
- 5.6.40 R The heading for Section 6 of the *illustration* and the heading of the column on the right-hand side of this section must state the frequency with which payments must be made by the *customer*. (For example, if payments are to be made on a monthly basis, the heading for this section must be ‘What you will need to pay each month’ and the column must be headed ‘Monthly payments’.)
- 5.6.41 R All the payments in Section 6 of the *illustration* must be calculated based on the frequency used for the purposes of the headings in *MCOB 5.6.40R* and must be shown in the column on the right-hand side of this section.
- 5.6.42 R Section 6 of the *illustration* must contain the following information:
- (1) the loan amount on which the *illustration* is based. This figure should include all fees, charges and insurance premiums that have been added to the loan in accordance with *MCOB 5.6.18R(2)* and *MCOB 5.6.18R(3)*, and the following text must follow the loan amount:
- “and includes the [fees] [and] [insurance premiums] that are shown in [Section 8] [and] [Section 9] as being added to your mortgage.”**



- (2) the assumed start date that has been used in the *illustration* to estimate the number of payments to be charged at given interest rates must be stated using the following text:
- “This illustration assumes that the mortgage will start on [insert assumed start date].”; and
- (3) except where *MCOB 5.6.54R* applies, for each of the interest rates charged on the *regulated mortgage contract*:
- (a) the number of payments at that interest rate;
  - (b) whether the interest rate is fixed or variable;
  - (c) the interest rate charged on the *regulated mortgage contract* at the time the *illustration* is issued; and
  - (d) the amount that the *customer* must pay in each instalment at that interest rate, which must be recorded in the right-hand column of this section (see *MCOB 5.6.48R*).

- 5.6.43 R Where the *illustration* covers a *regulated mortgage contract* that automatically converts from one repayment method to another after a specified period, then the *illustration* must show the effect of this change on the regular payment, in the same way as the requirements in *MCOB 5.6.42R(3)*.
- 5.6.44 G If appropriate, the two statements required by *MCOB 5.6.42R(1)* and *MCOB 5.6.42R(2)* may be merged, for example ‘These payments are based on a loan amount of £x and assume that the mortgage will start on [dd/mm/yy]’.
- 5.6.45 G *MCOB 5.6.42R(3)* applies to each interest rate charged on the *regulated mortgage contract* covered by the *illustration*. This means that it applies to different interest rates charged at different times, for example, where the interest rate changes at the end of any initial discounted, fixed or other special interest rate period.
- 5.6.46 R The following information must be included in the description of the interest rate required by *MCOB 5.6.42R(3)(c)* except where *MCOB 5.6.54R* applies:
- (1) where the interest rate can change, the word ‘currently’ must be used to illustrate the current interest rate payable; and
  - (2) where the interest rate changes after a given period the words ‘followed by’ must be used to indicate this.
- 5.6.47 G An example of how the information required by *MCOB 5.6.42R(3)* and *MCOB 5.6.46R* may be presented when there is an initial fixed interest

rate for a period of 22 months followed by the *mortgage lender's* standard variable interest rate for a period of 278 months is as follows:

“22 payments at a fixed rate of [...]%

followed by

278 payments at a variable rate, currently [...]%”.

- 5.6.48 R The information required by *MCOB 5.6.42R(3)(d)* must exclude:**
- (1) the cost of repaying the capital if the *regulated mortgage contract* is an *interest-only mortgage*: where part of the *regulated mortgage contract* is an *interest-only mortgage*, the cost of repaying the capital must be excluded only for that part; and**
  - (2) the cost of any products which may be sold in conjunction with the *regulated mortgage contract* (whether *tied products* or not), unless the cost has been added to the mortgage.**
- 5.6.49 R If, because of the assumed start date of the *regulated mortgage contract*, the initial payment differs from the subsequent payments, the initial payment must be shown in this section in accordance with *MCOB 5.6.42R(3)(d)*.**
- 5.6.50 R Where the *illustration* covers a *regulated mortgage contract* that is a combination of a *repayment mortgage* and an *interest-only mortgage*, the payment amounts in *MCOB 5.6.42R(3)(d)* must be the combination of the amount to be paid on the *repayment mortgage* and the amount to be paid on the *interest-only mortgage*, unless *MCOB 5.6.13R* or *MCOB 5.6.54R* apply in which case they must be stated separately.**
- 5.6.51 R Where the interest is deferred on the *regulated mortgage contract*, the following text must be included under the information on the deferred interest rate included in the *illustration* in accordance with *MCOB 5.6.42R(3)*:**
- “The interest deferred will be added to your mortgage. The table at Section [insert 6a or 6b if *MCOB 5.6.55R* applies] of this illustration shows how this will affect the amount you owe.”**
- 5.6.52 R Where all or part of the *regulated mortgage contract* to which the *illustration* relates is an *interest-only mortgage*:**
- (1) the *illustration* must include the sub-heading ‘Cost of repaying the capital’ with the following text under it:**
- “You will still owe [insert amount of loan on an interest-only basis] at the end of the mortgage term. You will need to make separate arrangements to repay this. When**

comparing the payments on this mortgage with a repayment mortgage, remember to add any money that you may need to pay into a separate savings plan to build up a lump sum to repay this amount.”;

- (2) if the *regulated mortgage contract* requires the *customer* to take out a *repayment vehicle* that is a *tied product* either through the *mortgage lender* or *mortgage intermediary* then:
  - (a) include a sub-heading ‘Savings plan that you must take out through [insert name of *mortgage lender* or *mortgage intermediary*]’;
  - (b) include an accurate quotation or a reasonable estimate of the payments the *customer* will need to make for the *repayment vehicle*; and
  - (c) if a quotation cannot be provided under (b), state that a quotation is not available at present, that a quotation will be provided as soon as possible and that in the event that this is provided after an application is made, and is found to be unacceptable to the *customer*, that the application may be cancelled with a full refund of all fees (in accordance with *MCOB 5.4.23R(3)*).
- (3) if the *illustration* includes a quotation for the payments that would need to be made into the *repayment vehicle* by the *customer*:
  - (a) unless (2) applies, the *illustration* must include the sub-heading ‘Savings plan that you do not have to take out through [insert name of *mortgage lender* or *mortgage intermediary*]’;
  - (b) the *illustration* must provide a brief description only of the type of *repayment vehicle* illustrated (full details of the *repayment vehicle* may be provided separately);
  - (c) the quotation must be based on the frequency of payments in *MCOB 5.6.40R* and must be included in the column for payments alongside the description required by (b); and
  - (d) the *illustration* must refer the *customer* to the individual product disclosure documentation required by *COB*.
- (4) if a quotation for the *repayment vehicle* is not provided in the *illustration*, the *illustration* must include a ‘£’ sign in the

column for payments alongside the following text, which follows the text in (1):

“When you have found out what payments you need to make into a savings plan you may find it helpful to add these to your mortgage payments and put the total payment in the column opposite.”;

- (5) unless *MCOB 5.6.55R* applies, if a quotation for the *repayment vehicle* has been included in the *illustration* Section 6 must be extended to illustrate the monthly cost inclusive of the savings plan and must have the sub-heading “What you will need to pay each [insert frequency of payments from *MCOB 5.6.40R*] including the cost of a savings plan to repay the capital” and must include:
- (a) the information required by *MCOB 5.6.42R(3)* for each interest rate charged on the *regulated mortgage contract*; and
  - (b) the sum of what the *customer* would need to pay in each instalment for the *regulated mortgage contract* and for the *repayment vehicle* in the payments column. For example if payments are made monthly, this would be the amount that the *customer* would need to pay each month for the *regulated mortgage contract* and the *repayment vehicle*. Where different interest rates are charged on the *regulated mortgage contract* the amount payable in each instalment at each interest rate must be shown in the payments column.

5.6.53 G An example of how the information required by *MCOB 5.6.52R(1)*, *MCOB 5.6.52R(3)* and *MCOB 5.6.52R(5)* may be presented is as follows:

<b>Cost of repaying the capital</b>	
You will still owe £Z at the end of the mortgage term. You will need to make separate arrangements to repay this. When comparing the payments on this mortgage with a repayment mortgage, remember to add any money that you may need to pay into a separate savings plan to build up a lump sum to repay this amount.	
<b>Savings plan that you do not have to take out through [insert name of <i>mortgage lender</i> or <i>mortgage intermediary</i>]</b>	<b>Monthly payments</b>
XYZ savings plan (see separate product disclosure document)	£C
<b>What you will need to pay each month including the cost of a savings plan to repay the capital</b>	
36 payments at a fixed rate currently x% followed by:	£(A+C)
264 payments at a variable rate currently y%.	£(B+C)

#### **Multi-part mortgages**

5.6.54 R Where the loan under the *regulated mortgage contract* is divided into more than one part (for example, where part of the loan is on a fixed interest rate and part on a discounted variable interest rate) and the *firm* displays the initial cost of all parts, and the total cost, in a tabular format in the *illustration*, *MCOB 5.6.42R(3)* and *MCOB 5.6.46R* do not apply; instead:

- (1) each part must be numbered for ease of reference in the *illustration*;
- (2) the loan amounts must be totalled;
- (3) the number and frequency of each payment must be stated;
- (4) the repayment method for each part must be stated;
- (5) the ‘initial interest rate payable’ for each part must be stated ;
- (6) whether the interest rate payable is fixed or variable for each part must be stated; and
- (7) the regular payment for each part must be stated and the total payment for all parts highlighted (excluding the information listed in *MCOB 5.6.48R*).

- 5.6.55 R Unless all of the interest rates described in *MCOB 5.6.54R(5)* apply for the term of the loan part to which they apply, then an additional section numbered as 6a and titled “What you will need to pay in future” must be included to indicate the future stepped payments (if *MCOB 5.6.51R* also applies then the section on deferred interest must be numbered 6b). This section must:
- (1) state when a change in payment will occur;
  - (2) state the reason for the change in payment; and
  - (3) confirm that the payment illustrated assumes interest rates will not change.
- 5.6.56 R Where *MCOB 5.6.55R* applies and part of the *regulated mortgage contract* is an *interest-only mortgage*:
- (1) if a quotation for the *repayment vehicle* has been included in the *illustration* in accordance with *MCOB 5.6.52R(3)* then *MCOB 5.6.52R(5)* does not apply.
  - (2) a statement is required to indicate that these payments do not include the cost of any savings plan.
- 5.6.57 G An example of a statement which would meet the requirements of *MCOB 5.6.56R(2)* would be “Remember to add the cost of any savings plan to these monthly payments”.
- Section 7: ‘Are you comfortable with the risks?’
- 5.6.58 R *MCOB 5.6.59R* to *MCOB 5.6.65R* do not apply to loans without a term or regular repayment plan where some or all of the interest rolls up, for example, secured bridging loans, secured overdrafts or *mortgage credit cards*. In these cases *MCOB 5.6.140R* to *MCOB 5.6.145R* apply.
- 5.6.59 R Under the section heading ‘Are you comfortable with the risks?’:
- (1) under the sub-heading ‘What if interest rates go up?’ the *illustration* must include the following:
    - (a) if the interest rate is fixed throughout the term of the *regulated mortgage contract*, an explanation that the payments will not vary because the interest rate is fixed;
    - (b) if the interest rate is fixed for part of the term of the *regulated mortgage contract*, an explanation of when or how increases in the interest rate charged on the *regulated mortgage contract* affect the *customer’s* payments;

- (c) if the interest rate cannot go above a certain level or below a certain level, or both, and this applies throughout the term of the *regulated mortgage contract*, an explanation that this is the case;
- (d) if the interest rate cannot go above or below a certain level for part of the term of the *regulated mortgage contract*, an explanation that this is the case and of when or how increases in the interest rate charged on the *regulated mortgage contract* affect the *customer's* payments;
- (e)
  - (i) if (c) or (d) apply, the maximum or minimum interest rate, or both, and the payments at each of these interest rates; and
  - (ii) where a *repayment vehicle* has been included in the *illustration* in accordance with *MCOB 5.6.52R(3)*, the payments quoted in (i) must include the cost of the *repayment vehicle* and state that this is the case;
- (f) if the *regulated mortgage contract* is made up of a number of different parts including different types of interest rate and different rates of interest, an explanation of when or how increases in the interest rate charged on the *regulated mortgage contract* affect the *customer's* payments for each part (or combination of parts);
- (g) except where (2)(a) or (2)(b) apply, the following text:
 

“The [frequency of payments from *MCOB 5.6.40R*] payments shown in this illustration could be considerably different if interest rates change. For example, for one percentage point increase in [describe the interest rate that applies], your [insert frequency of payments] payment will increase by around £[insert amount by which payment will increase].”; and
- (h) except where (2)(a) or (2)(b) apply, if (f) applies the following additional text after the text in (g), for each part (or combination of parts), where the amounts by which the *customer's* payments would increase are different:
 

“After the [describe the interest rate that applies, the part (or parts) to which it applies, and date or period for which it applies] then for one percentage point

increase in [describe the interest rate that applies], your [insert frequency of payments] payment will increase by around £[insert amount by which payment will increase].”.

- (2) paragraphs (1)(g) and (1)(h) do not apply where:
  - (a) the interest rate is fixed throughout the term of the *regulated mortgage contract*; and
  - (b) the difference between the interest rate included in the *illustration* in accordance with *MCOB 5.6.42R* and the maximum interest rate that can be charged on the *regulated mortgage contract* is less than one percentage point.

- (3) under the sub-heading ‘What if your income goes down?’:

“You will still have to pay your mortgage if you lose your job or if illness prevents you from working. Think about whether you could do this.”

5.6.60

**R** The amount by which the *customer’s* payments would increase in accordance with *MCOB 5.6.59R(1)(g)* and (h) must be calculated as follows:

- (1) the *firm* must use the total amount borrowed, or assume that all payments due on the *regulated mortgage contract* have actually been paid, all additional fees and payments due have been paid, and no underpayments or overpayments have been made;
- (2) where all or part of the *regulated mortgage contract* is a *repayment mortgage*, the calculation must be based on:
  - (a) the total amount borrowed; or
  - (b) the amount of the loan outstanding from the earliest point at which the interest rate charged on the *regulated mortgage contract* can vary (for example, if the *regulated mortgage contract* has an initial fixed interest rate, this will be from the point at which the fixed interest rate ends); and
- (3) the interest rate from which the increase is calculated must be the variable interest rate charged on the *regulated mortgage contract* at the date that the *illustration* is issued (that is, the variable interest rate quoted in Section 4 of the *illustration*); where the variable interest rate changes after a set period or on a set date, it must be based on the initial variable interest rate charged on the *regulated mortgage contract* at the date the *illustration* is issued (for example, if



**the initial interest rate is discounted, it must be based on the discounted rate).**

- 5.6.61 G Although the effect of a one percentage point increase in interest rates on the *customer's* payments is not completely linear, the purpose of *MCOB 5.6.59R(1)(g)* and (h) is to show the approximate effect of such an increase.
- Risk warning**
- 5.6.62 R Unless *MCOB 5.6.59R(2)(a)* or (b) apply, the following words must be prominently displayed at the end of the sub-section ‘What if interest rates go up?’:
- “Rates may increase by much more than this so make sure you can afford the [insert frequency of payments from *MCOB 5.6.40R*] payment”.
- 5.6.63 R The following words must be prominently displayed at the end of the sub-section ‘What if your income goes down?’:
- “Make sure you can afford your mortgage if your income falls”.
- 5.6.64 G For guidance on prominence see *MCOB 2.2.9G*.
- 5.6.65 R The following text must be included at the end of Section 7 ‘Are you comfortable with the risks?’:
- “The FSA’s guide ‘You can afford your mortgage now, but what if...?’ will help you consider the risks. You can get a free copy from [www.fsa.gov.uk/consumer](http://www.fsa.gov.uk/consumer), or by calling 0845 606 1234.”
- Section 8: ‘What fees must you pay?’
- 5.6.66 R Under the section heading ‘What fees must you pay?’ the *illustration* must:
- (1) itemise all the fees that are included in the calculation of the *APR* in accordance with *MCOB 10* (Annual Percentage Rate), excluding charges for any compulsory mortgage payment protection insurance; and
  - (2) include a statement at the end of the section using the following text:  
  
“You may have to pay other taxes or costs in addition to any fees shown here.”
- 5.6.67 G An example of a fee that would normally be included in Section 8 would be a fee to re-inspect a property after completion of works if it is known that this fee will be charged at the time the *illustration* is produced. An example of a fee that would not be included would be a

fee payable by the *customer* to insure their property elsewhere (however this would need to be stated in Section 9 of the *illustration* ‘Insurance’, as required by *MCOB* 5.6.77R(2)). Fees payable upon repayment of the *regulated mortgage contract* at the end of the mortgage term would need to be included. Where fees are payable only on early repayment of the *regulated mortgage contract*, they should not be stated here (however these fees would need to be stated in Section 10 of the *illustration* ‘What happens if you do not want this mortgage any more’, as required by *MCOB* 5.6.88R(2)).

**5.6.68 R The fees included in this section in accordance with *MCOB* 5.6.66R must be itemised under the relevant sub-headings as follows:**

- (1) the fees that are payable by the *customer* to the *mortgage lender* must be itemised under the sub-heading ‘Fees payable to [name of *mortgage lender*]’;**
- (2) the remaining fees must be itemised under the sub-heading ‘Other fees’; and**
- (3) (a) if there are no fees to be itemised in accordance with (1), the sub-heading must be retained and a statement must be included stating that no fees apply; and**  
**(b) if there are no fees to be itemised in accordance with (2), then the sub-heading must be retained and only the text in *MCOB* 5.6.66R(2) applies.**

**5.6.69 R The following information must be provided for each fee included in this section of the *illustration* in accordance with *MCOB* 5.6.66R(1):**

- (1) a description of the fee;**
- (2) the amount payable by the *customer* recorded in a column headed ‘Fee amount’ on the right-hand side of this section;**
- (3) for fees included under the sub-heading ‘Other fees’, to whom the fee is payable;**
- (4) when the fee is payable;**
- (5) whether or not the fee is refundable, and if so, the extent to which it is refundable; and**
- (6) which fees (if any) are estimated in accordance with *MCOB* 5.6.35R(2) and based on representative information; and**
- (7) if any fee is payable after the start of the *regulated mortgage contract* and subject to change in the future, for example a fee payable on final repayment of the *regulated mortgage***

*contract*, the amount of that fee, along with a statement that this is the ‘current fee’.

- 5.6.70 R (1) If a *higher lending charge* is payable by the *customer*, the following text must be used to describe such a charge for the purposes of *MCOB 5.6.69R*:
- “A higher lending charge is payable because you are borrowing [insert the ratio of the mortgage amount (from *MCOB 5.6.6R(2)*) to the property’s price or value (from *MCOB 5.6.6R(3)*)] of the property’s [estimated] [price/value].”
- (2) If the *customer* has asked for any fees to be added to the loan, this should be stated alongside each fee.
- (3) If the *customer* has the option of adding to the loan amount any of the fees included in this section, the following text must be included:
- “If you wish you can add [this/these/the {type of fee}] fee(s) to the mortgage. This would increase the amount you borrow to [insert amount of the mortgage with the fee(s) included] and would increase the payments shown in Section 6. If you want to do this, you should ask for another illustration that shows the effect of this on your [insert frequency of payments from *MCOB 5.6.40R*] payments.”
- (4) Any fees that are estimated based on representative information in accordance with *MCOB 5.6.35R(2)* must include an appropriate explanation of what the fee represents. For example, if this section includes an estimated fee for the legal work that a *customer* might be charged by his conveyancer for carrying out work on behalf of the *mortgage lender*, the *illustration* must explain that the fee is estimated, and that it only covers part of the costs of legal work that the *customer* might need to pay.
- 5.6.71 G ‘Other fees’ will include any fee charged by a *mortgage intermediary*, or another third party, for *advising on* or *arranging* a *regulated mortgage contract* but not commission or *procurator fees* (which are dealt with in Section 13 of the *illustration*).
- 5.6.72 R A *mortgage lender* must provide a *tariff of charges* to the *customer*, if the *customer* so requests.
- Section 9: ‘Insurance’
- 5.6.73 R (1) Under the section heading ‘Insurance’ the *illustration* must include details of:

- (a) insurance which is a *tiered product*; and
- (b) insurance which is required as a condition of the *regulated mortgage contract* which is not a *tiered product*.

(2) A *firm* may also provide details of insurance which it is optional for the *customer* to take out under this section heading.

(3) It must be clear to the *customer* which products he is required to purchase under which circumstances (for example, where both a *tiered product* and a *mortgage intermediary* are involved, whether the policy must be purchased from the *mortgage lender* or the *mortgage intermediary*).

5.6.74

**R** Under the sub-heading ‘Insurance you must take out through [insert name of *mortgage lender* or where relevant the name of the *mortgage intermediary*, or both]’ the following information must be included if the *regulated mortgage contract* requires the *customer* to take out insurance that is a *tiered product* either through the *mortgage lender* or where relevant the *mortgage intermediary*:

- (1) details of which insurance is a *tiered product*;
- (2) for how long the *customer* is obliged to purchase the insurance;
- (3) an accurate quotation or a reasonable estimate of any payments the *customer* needs to make for the insurance;
- (4) where a quotation is provided for insurance in accordance with (3) on the basis of an estimated sum insured, because the actual required sum insured is unknown, the fact that it is estimated should be stated along with confirmation of the level of cover that has been assumed;
- (5) details of when the *customer’s* payments for such insurance change, for example, if premiums are reviewed annually; and
- (6) where a quotation is not provided in accordance with (3) a statement of when and how a quotation will be provided (for example, separately and as soon as possible).

5.6.75

**G** *Firms* are reminded that MCOB 5.4.23R requires a *firm* to provide a *customer* with an accurate quotation for any *tiered products*. Where the level of cover the *firm* requires the *customer* to take up is known at the outset, then the quotation should reflect that level of cover.

- 5.6.76 R If the *regulated mortgage contract* does not require the *customer* to take out insurance as a *tied product*, the sub-heading ‘Insurance you must take out through [insert the name of the *mortgage lender*, and where relevant the name of the *mortgage intermediary*]’ must be retained and a statement must be provided under this heading that the *customer* is not obliged to take out any insurance through the *mortgage lender* or, where relevant, the *mortgage intermediary*.
- 5.6.77 R The following information must be included under the sub-heading ‘Insurance you must take out as a condition of this mortgage but that you do not have to take out through [insert the name of the *mortgage lender*, or where relevant the name of the *mortgage intermediary*, or both]’:
- (1) if the *regulated mortgage contract* requires the *customer* to take out an insurance policy (other than that which is a *tied product* which the *customer* is obliged to purchase through the *mortgage lender*, or where relevant the *mortgage intermediary*), a brief statement of the type of insurance the *firm* requires; a quotation for the insurance that the *firm* issuing the *illustration* wishes to promote to the *customer* may be included in the *illustration* (estimated where necessary);
  - (2) if the *mortgage lender* or the *mortgage intermediary* makes a charge in cases where the *customer* does not arrange insurance that is a condition of the *regulated mortgage contract* through the *mortgage lender* or the *mortgage intermediary*, this must be stated, together with the amount of the charge and the frequency with which this charge is payable; and
  - (3) if no insurance policies are required (other than that which is a *tied product*), the sub-heading ‘Insurance you must take out as a condition of this mortgage that you do not have to take out through [insert name(s) of *mortgage lender* and, where relevant the *mortgage intermediary*]’ must be retained in the *illustration* and a statement must be provided under this heading that no such insurance is required.
- 5.6.78 G Under the sub-heading ‘Insurance you must take out as a condition of this mortgage that you do not have to take out through [insert name of *mortgage lender* or where relevant the name of the *mortgage intermediary*, or both]’ the *illustration* should not include any insurance policy that may be taken out by a *mortgage lender* itself to protect its own interests rather than the *customer’s* interests, for example, because of the ratio of the loan amount to the property value.
- 5.6.79 G If the cost of any insurance that the *mortgage lender* might take out to protect its own interests, because of the ratio of the loan amount to the

property value, is passed on to the *customer*, it will be shown elsewhere in the *illustration*, for example, as a *higher lending charge* or in the interest rate charged.

- 5.6.80**      **R**      A *firm* may include in the *illustration*, under the sub-heading ‘Optional insurance’, quotations (estimated where necessary) for any insurance products (other than the insurance products covered elsewhere in the *illustration* in accordance with *MCOB* 5.6.74R and 5.6.77R) that the *firm* issuing the *illustration* wishes to promote to the *customer*.
- 5.6.81**      **R**      If no quotations are included in the *illustration* in accordance with *MCOB* 5.6.80R, the sub-heading ‘Optional insurance’ must not be included in the *illustration*.
- 5.6.82**      **R**      (1)      If any quotations for insurance are included in the *illustration* in accordance with *MCOB* 5.6.74R(3), *MCOB* 5.6.77R(1) or *MCOB* 5.6.80R, the *illustration*:
- (a)      must include a brief description only of the type of insurance (full details of the insurance cover may however be provided separately); and
  - (b)      (i)      must include the total price to be paid by the *customer* in a column on the right hand side of the *illustration* under the heading ‘[insert frequency of payments quoted] payments’; and
  - (ii)      may refer the *customer* to the individual insurance product disclosure documentation.
- (2)      If the *customer* has asked to add any insurance premiums to the amount borrowed in accordance with *MCOB* 5.6.18R(3):
- (a)      the insurance premiums must be included in Section 3; and
  - (b)      the following text must be used in Section 9:  
  
            “The annual insurance premium will be added to your mortgage account and increase the amount you owe. You can pay this premium in full by [insert details of the period of time that the *customer* will have to pay the premium in full before interest is charged on the insurance premium e.g. ‘by the end of the month in which the *regulated mortgage contract* starts’] at no extra cost, otherwise interest will be charged at [insert details of the applicable interest rate e.g. ‘the same rate as your mortgage’ or

**‘the standard variable rate which is currently x%’].”**

5.6.83 G The terms on which an insurance premium has been calculated should be presented to the *customer* in the format determined by the relevant regulatory requirements.

**Section 10: ‘What happens if you do not want this mortgage any more?’**

5.6.84 R Under the heading ‘What happens if you do not want this mortgage any more?’, the *illustration* must include the following information on the *regulated mortgage contract*:

- (1) under the sub-heading ‘Early repayment charges’:
  - (a) an explanation that the *customer* cannot repay the *regulated mortgage contract* early, if this is the case;
  - (b) an explanation of whether *early repayment charges* are payable;
  - (c) an explanation of when *early repayment charges* are payable;
  - (d) an explanation of any other fees that are payable if the *regulated mortgage contract* is repaid early, and the current level of these fees;
  - (e) a basic explanation of the basis on which *early repayment charges* are calculated (for example, as a percentage of the loan or as so many months’ interest), including where appropriate details of any *cashback* or other incentives that must be repaid. The *illustration* may refer to a separate document for full details of all terms and conditions relating to the charges that apply if the *regulated mortgage contract* is repaid early;
  - (f) example cash amounts of any *early repayment charges* indicating the range of charges that apply over the period during which such charges apply calculated in accordance with *MCOB 5.6.88R*, which must be described in the *illustration* as cash examples;
  - (g) the maximum *early repayment charge* that the *customer* could be charged in accordance with *MCOB 12.3* (Early repayment charges), plus the cost of any other fees, which must be shown as cash amounts and described in the *illustration* as ‘the

maximum charge you could pay' [add if applicable, 'plus (a) fee(s) which (is/are) currently £x']; and

(2) under the sub-heading 'What happens if you move house?':

details of whether or not the *regulated mortgage contract* is portable on moving house and a brief explanation of any conditions or restrictions that apply including whether there are any restrictions on changing the terms of the *regulated mortgage contract* during the period in which any *early repayment charges* apply (a reference to another document may be made in order to provide the *customer* with further details of the conditions or restrictions).

- 5.6.85 G The requirements in *MCOB 5.6.84R(1)* may be presented in a tabular format.
- 5.6.86 R Where *MCOB 5.6.84R(1)(f)* would result in more than three cash amounts being shown in the *illustration*, the cash amounts shown in the *illustration* may be restricted to three examples. These examples must be representative of the full range of charges that apply and not be limited to the lowest charges that apply. These three examples are in addition to:
- (1) any statement of the amount of any fees described in *MCOB 5.6.84R(1)(d)*; and
- (2) the maximum *early repayment charge* required by *MCOB 5.6.84R(1)(g)*.
- 5.6.87 G An example which would comply with *MCOB 5.6.86R* would be if a five year fixed rate mortgage had a charge which reduced linearly by 1% each year from 5% in the first year to 1% in the final year and cash examples were used based on 5% in year 1, 3% in year 3 and 1% in year 5.
- 5.6.88 R (1) In calculating example cash amounts in accordance with *MCOB 5.6.84R(1)(f)*, it must be assumed that:
- (a) the *regulated mortgage contract* is repaid in full;
- (b) unless the original amount borrowed is used, that all payments due on the *regulated mortgage contract* are actually paid;
- (c) additional fees and charges such as insurance premiums have been paid; and
- (d) no underpayments or overpayments have been made.
- (2) If:



- (a) *cashbacks* or other incentives need to be repaid; or
- (b) fees need to be paid;

the amounts that would need to be repaid or paid must be included in the example cash amounts.

- (3) Where the calculation of the *early repayment charge* is based on the interest rate charged on the *regulated mortgage contract* or on interest rates generally, the interest rates used for the calculation of the example cash amounts must be those in force at the date that the *illustration* is issued to the *customer*.
- (4) The example cash amounts must reflect the maximum charge in a particular year. Where it is possible to state exact *early repayment charges* (that is, where all such charges are based on the original amount borrowed), the *illustration* must do so.

5.6.89 R Where the cash examples from *MCOB 5.6.88R* included in the *illustration* would vary either if the interest rate charged on the *regulated mortgage contract* changed or with changes in interest rates generally, an appropriate warning that the *early repayment charges* may vary from the cash examples must be included in the *illustration*.

Section 11: ‘What happens if you want to make overpayments?’

5.6.90 R (1) Under the section heading ‘What happens if you want to make overpayments?’, the *illustration* must include details of any restrictions on lump sum and regular overpayments on the *regulated mortgage contract*, together with a statement as to whether or not the amount on which the interest charged is recalculated is reduced immediately on receipt of any lump sum or regular overpayment.

(2) Where such recalculation does not take place immediately (for example, if an annual rest method is used), then this statement must be accompanied by an explanation of when the amount on which the interest charged is recalculated is reduced following a lump sum or regular overpayment.

(3) Where *early repayment charges* apply, this section must not repeat the details provided in Section 10 of the *illustration*, but may refer to Section 10.

5.6.91 G Where the interest recalculation described in *MCOB 5.6.90R* takes place immediately, *firms* may add a statement in this section explaining that the *customer* will get the benefit of the overpayment



*back* any monies overpaid and a brief statement of any conditions that apply.

- 5.6.98 R Under the sub-heading ‘Incentives’, the *illustration* must include:
- (1) any incentives including *cashbacks*; and
  - (2) if a *cashback* is provided, the amount of the *cashback* and details of when it is paid to the *customer*.
- 5.6.99 R Under the sub-heading ‘Additional borrowing available without further approval’, the *illustration* must provide details of circumstances in which there are any *linked borrowing* facilities that would allow the *customer* to increase the amount of the loan on which the *illustration* is based without any further approval from the *mortgage lender* (for example, if there are additional drawdown facilities).
- 5.6.100 R Under the sub-heading ‘Additional secured borrowing’, the *illustration* must provide details of circumstances in which additional *secured lending* is offered with the *regulated mortgage contract* that would allow the *customer*, subject to certain conditions, to increase the amount of the loan on which the *illustration* is based.
- 5.6.101 R Under the sub-heading ‘Unsecured borrowing’, the *illustration* must provide details of circumstances in which *unsecured lending* is offered with the *regulated mortgage contract* that would allow the *customer* to increase the amount of the loan on which the *illustration* is based.
- 5.6.102 R Under the sub-heading ‘Credit card’, the *illustration* must:
- (1) state if a credit card is offered with the *regulated mortgage contract*; and
  - (2) if a credit card is offered and it is a *mortgage credit card*:
    - (a) unless (b) applies, include the following text:

“This card will not give you a number of the statutory rights associated with traditional credit cards. Your mortgage offer will tell you more about the differences.”; or
    - (b) where the *mortgage lender* provides the *customer* with contractual rights in relation to a *mortgage credit card* equal to or greater than those provided under the Consumer Credit Act 1974, include the following text:

**“This card will not give you a number of the statutory rights associated with traditional credit cards. However, [insert name of *mortgage lender*] will ensure that you will be treated no differently from the user of a traditional credit card. Your mortgage offer will tell you more about this.”**

- 5.6.103 R** Where any of the additional features under *MCOB 5.6.99R* to *MCOB 5.6.102R* inclusive apply, then the following must also be stated if the amount of additional borrowing that would be available to the *customer* is stated in the *illustration*:
- (1)** the maximum additional amount available;
  - (2)** if the interest rate payable on any additional borrowing is different to the interest rate in Section 4 and Section 6 of the *illustration*, the interest rate and the *APR* charged on the additional borrowing. The *APR* must be calculated in accordance with *MCOB 10* (Annual Percentage Rate), based on the maximum amount of additional borrowing that would be permitted for the *customer* and the term of the loan from *MCOB 5.6.6R(4)*;
  - (3)** the total resulting debt the *customer* could incur (including the original loan amount);
  - (4)** the payments on this total debt based on the frequency of payments in *MCOB 5.6.40R* and the interest rate(s) that would apply on the date the *illustration* is issued;
  - (5)** whether this additional borrowing must be repaid in full if the original loan is repaid in full, along with details of any conditions that apply;
  - (6)** if *early repayment charges* apply to the additional amount borrowed:
    - (a)** that *early repayment charges* are payable;
    - (b)** an explanation of when *early repayment charges* are payable; and
    - (c)** the maximum *early repayment charge* that the *customer* could be charged in accordance with *MCOB 12.3* (Early repayment charges) which must be shown as a cash amount; and
  - (7)** if it is the case, that the maximum amount of borrowing available, or the terms and conditions, may change depending on factors such as ratio of the loan amount to the property value.

- 5.6.104 R Where more than one additional borrowing facility from *MCOB 5.6.99R* to *MCOB 5.6.102R* applies, *MCOB 5.6.103R* (3) and (4) must each be based on the total of all these *linked borrowing* facilities and included under a separate sub-section titled ‘Total additional borrowing’.
- 5.6.105 G The purpose of *MCOB 5.6.104R* is to show the total amount of any additional borrowing facilities that would be available to the *customer* and the cost of utilising these facilities. It must combine the amount available under any *linked borrowing* facilities including additional *secured lending*, credit cards and *unsecured lending*.
- 5.6.106 R (1) Where additional features are included in accordance with *MCOB 5.6.92R* and these are credit facilities that do not meet the definition of a *regulated mortgage contract*, the relevant parts of Section 12 of the *illustration* must include the following text:
- “This additional feature is not regulated by the Financial Services Authority”.
- (2) Where additional features are included in accordance with *MCOB 5.6.92R* and these are credit facilities regulated by the Consumer Credit Act 1974, the relevant parts of Section 12 of the *illustration* must include the following text after the text in (1):
- "but is regulated under the Consumer Credit Act 1974. You will receive a separate credit agreement with any offer document for this additional feature, describing the detailed terms on which this feature is available."
- 5.6.107 R Where all or part of the maximum amount of additional borrowing is secured on the *customer’s* home, a prominent warning must be included that additional borrowing increases the amount of credit secured on the *customer’s* home.
- 5.6.108 G Suitable wording for the warning contained in *MCOB 5.6.107R* would be:
- “This will increase the amount of borrowing secured on your home”.
- 5.6.109 R (1) Under the sub-heading ‘Linked current account’, the *illustration* must include the following information:
- (a) whether a linked current account is a compulsory or optional product (if the current account is a compulsory product this must also be stated in Section 4 of the *illustration* in accordance with *MCOB 5.6.25R(6)*);

- (b) an explanation of the interest rates that apply under different circumstances to the linked current account, if different from the interest rate charged on the *regulated mortgage contract* (for example, if a different interest rate applies if the account is overdrawn); and
  - (c) the *firm* providing the linked current account if it is not the *mortgage lender*.
- (2) If an example to show the effect of the linked current account on the *regulated mortgage contract* is included in the *illustration*, it must be based on the actual or likely amount that the *customer* intends to pay into the linked current account on a regular basis and the actual or likely expenditure profile of the *customer* concerned.
- 5.6.110 R (1) Under the sub-heading ‘Linked savings account’, the *illustration* must include the following information:
- (a) whether a linked savings account is a compulsory or optional product (if the savings account is a compulsory product this must also be stated in Section 4 of the *illustration* in accordance with *MCOB 5.6.25R(6)*);
  - (b) the interest rate paid on the linked savings account if it differs from the interest rate charged on the *regulated mortgage contract*; and
  - (c) the *firm* providing the linked savings account if it is not the *mortgage lender*.
- (2) If an example to show the effect of the linked savings account on the *regulated mortgage contract* is included in the *illustration*, it must be based on the actual or likely level of relevant savings for the *customer* concerned.
- 5.6.111 G If an example is included in the *illustration* in accordance with *MCOB 5.6.109R(2)* or *MCOB 5.6.110R(2)*, it must be based on information obtained from the *customer* and the amounts that are intended to be paid into the current or savings account on a regular basis; the amounts that it is intended are saved; and the actual or likely expenditure profile. The amounts involved and the expenditure profile should not be standard assumptions made by the *firm*, but should be those of the *customer* or the relevant person who would hold the accounts, or both, and be of a conservative nature. These assumptions should be stated in the *illustration*. For example, it should not be assumed that the *customer* will make lump sum payments unless he has indicated that he intends to do so, and in the case of linked current accounts it should not be assumed that the *customer* or person holding the account leaves

monies in the current account at the end of each month unless he actually does so, or intends to do so. In this case, a conservative assumption might be that the *customer* spends all the money paid into his current account evenly over the month.

- 5.6.112 G If a linked current account and a linked savings account are offered as part of the *regulated mortgage contract*, the examples in *MCOB* 5.6.109R(2) and *MCOB* 5.6.110R(2) can be combined into one example.

**Section 13: ‘Using a mortgage intermediary’**

- 5.6.113 R Where the *illustration* is issued to a *customer* by, or on behalf of, a *mortgage intermediary*, Section 13 ‘Using a mortgage intermediary’ must be included in the *illustration* and must include the following:

(1) unless *MCOB* 5.6.114R applies, a clear statement of the amount payable (either directly or indirectly) by the *mortgage lender* to the *mortgage intermediary*, or to any third parties; and

(2) the name of the *mortgage lender* who will make the payment, the name of the *mortgage intermediary* and the names of any third parties who will be paid.

- 5.6.114 R If the amount payable by the *mortgage lender* to the *mortgage intermediary* and to third parties is £250 or less, the *mortgage intermediary* need only state that the amount of the payment is ‘no more than £250’, unless the *customer* requests the actual amount.

- 5.6.115 R If the *mortgage intermediary* will pass to the *customer* all or part of the amount payable to the *mortgage intermediary* under *MCOB* 5.6.113R(1) or *MCOB* 5.6.114R, that fact may be stated in this section, along with the amount payable to the *customer*.

- 5.6.116 R If the *mortgage lender* will make no payment to the *mortgage intermediary* or any third party, this section may state that the *mortgage intermediary* will receive no payment.

- 5.6.117 R The amount payable in *MCOB* 5.6.113R(1) or *MCOB* 5.6.114R must include:

(1) any *procuration fee*; and

(2) a cash value for any material non-cash inducements that the *mortgage lender* provides to a *mortgage intermediary* or third party, whether payable directly or indirectly.

- 5.6.118 G *MCOB* 2.3.7R requires any material inducements provided to a *mortgage intermediary* or third party connected to the *mortgage intermediary*, by a *mortgage lender*, whether directly or indirectly, to

be quantified in cash terms, which will enable the cash values to be included in the *illustration* in accordance with *MCOB* 5.6.117R.

- 5.6.119 G An example of a statement which would comply with *MCOB* 5.6.113R and *MCOB* 5.6.117R would be:

“[name of *mortgage lender*] will pay [name of *mortgage intermediary*] an amount of £350 in cash and benefits if you take out this mortgage.”

**Section 14: ‘Where can you get more information about mortgages?’**

- 5.6.120 R This section must be renumbered Section 13 if the *illustration* is not provided by, or on behalf of, a *mortgage intermediary*.

- 5.6.121 R Under the section heading ‘Where can you get more information about mortgages?’, the prescribed text under this heading in *MCOB* 5 Annex 1R must be included.

**Contact details**

- 5.6.122 R This section must follow the section ‘Where can you get further information about mortgages?’ and must include the name, address and contact point of the *firm* providing the *illustration*.

- 5.6.123 G An example of wording which would comply with *MCOB* 5.6.122R would be:

“If you wish to discuss this mortgage illustration please contact [name of *firm*] at [address] or on [telephone number]”.

**Risk warning**

- 5.6.124 R The following words must be prominently displayed in the *illustration*, after the contact details:

**“Your home may be repossessed if you do not keep up repayments on your mortgage.”**

- 5.6.125 G For guidance on prominence see *MCOB* 2.2.9G.

**Amortisation table**

- 5.6.126 G (1) An amortisation table may be added to the end of the *illustration* after the information required by *MCOB* 5.6.124R if the *mortgage lender* or *mortgage intermediary* wishes. A *firm* may find that this is particularly appropriate to illustrate certain types of *regulated mortgage contract*, for example, a *regulated mortgage contract* with more than one part.
- (2) The purpose of (1) is to permit a *firm* to add an amortisation table in accordance with the European Commission’s



‘Recommendation of 1 March 2001 on pre-contractual information to be given to consumers by lenders offering home loans’ (C2001) 477 final – EN).

### Foreign currency mortgages

5.6.127 R If the *customer’s* liability under a *regulated mortgage contract* is in a currency other than sterling, *MCOB 5.6* applies to the *illustration* for that *regulated mortgage contract* with the following amendments:

- (1) all cash amounts must be given in the relevant currency except where otherwise required in (2)(a) and (3);
- (2) the following information must be stated under Section 4 ‘Description of this mortgage’:
  - (a) the amount in sterling on which the *illustration* is based from *MCOB 5.6.6R(2)* based on the exchange rate in (2)(b);
  - (b) the exchange rate used; and
  - (c) when the exchange rate quoted applied;
- (3) the following text must be added at the end of Section 4 ‘Description of this mortgage’:

“This illustration is based on the sterling equivalent of [insert details from (2)(a)] based on [insert details from (2)(b)] as at [insert details from (2)(c)]. Exchange rates can vary significantly. The effect of a 5% decrease in the value of sterling to the [insert name of relevant currency] would increase your total borrowing to [insert amount to which the amount borrowed from *MCOB 5.6.6R(2)* would increase in sterling]. This would increase your [insert frequency of payments from *MCOB 5.6.40R*] payments by the sterling equivalent of £[insert amount in sterling].”

The following information must be added to this text:

- (a) the cash amount to which the amount borrowed would increase in sterling if there was a decline of 5% in the value of sterling when compared to the relevant currency; and
- (b) the amount by which (2)(b) would increase the *customer’s* payments based on the frequency of payments from *MCOB 5.6.40R*, shown as a sterling equivalent cash amount.

### Risk warning

- 5.6.128 R The text at *MCOB 5.6.124R* must be immediately followed by the following additional text, prominently displayed (see *MCOB 2.2.9G*):
- “Changes in the exchange rate may increase the sterling equivalent of your debt.”

### Shared appreciation mortgages

- 5.6.129 R If the *regulated mortgage contract* is a *shared appreciation mortgage*, *MCOB 5.6* applies to the *illustration* with the following amendments:
- (1) Section 4 ‘Description of this mortgage’ must contain the following additional information and text in this order after the details required by *MCOB 5.6.25R* to *MCOB 5.6.29R*:
    - (a) “This mortgage involves [name of *mortgage lender*] taking a percentage share in any increase in the value of your property [insert details of all occasions when the share will be payable to the *mortgage lender*, for example, ‘after x years, or when this mortgage comes to an end or is terminated early’]. The amount [name of *mortgage lender*] will take depends on any increase in the value of your property.” [Include if relevant: “If your property falls in value between now and the end of this mortgage you will be required to pay [add details of what the *customer* will need to pay the *mortgage lender* if the property falls in value.]”];
    - (b)
      - (i) a basic explanation of how the amount of the share payable to the *mortgage lender* is calculated including the proportions of any given increase in the value of the property and whether this is dependent on the level of growth (for example, that the share payable to the *mortgage lender* is all of the increase in value of the property for the first 5% increase in value, plus half of the additional increase in the value of the property above this);
      - (ii) a reference to a separate document for full details of the terms and conditions relating to the amount of the share payable followed by:

“The example below shows how this works.

**EXAMPLE:** Based on the current [estimated] value of your property of [insert details from *MCOB 5.6.6R(3)*], the example(s) below show(s) what your property value would be and what share of that value [name of *mortgage lender*] would take after [insert term of the loan in accordance with *MCOB 5.6.6R(4)* or the term after which the equity share becomes payable if less] if the value of your property increased. [Include if relevant: “and what would happen if your property decreased in value.”] “Please note that you should add this payment to the amount of any early repayment charges that may be payable – see Section 10”;

- (c) except where (g) applies, example cash amounts for the value of the property and the corresponding amount of the equity share payable assuming an average annual increase, in the value of the property secured by the *regulated mortgage contract* of 1%, 5% and 10% over the term from (i);
- (d) if the *customer* would be required to pay the *mortgage lender* an amount because the value of the property on which the *regulated mortgage contract* would be secured had decreased from its value at the start of the term of the *regulated mortgage contract*, include example cash amounts for the value of the property and the corresponding amount payable assuming an average annual decrease, in the value of the property secured by the *regulated mortgage contract* of 1%, 5% and 10% over the term from (i);
- (e) if the amount of the equity share payable cannot go above or below a certain level, an explanation that this is the case along with a cash example described as ‘the maximum amount you could pay’;
- (f) include this text after the cash examples in (c):  
  
“This is not an indication of how the actual value of your property may change.”;
- (g) where (c) or (d) apply and the maximum percentage equity share payable is less than the example percentages in (c) or (d), only cash examples for those percentages required by (c) or (d) which are below this maximum need be quoted, along with the maximum in accordance with (e);

- (h) if there are no restrictions on the amount of the equity share payable, the following text should follow the text in (f):

**“The amount you will need to pay could be much higher than this.”; and**

- (i) for the purposes of the examples required by (c) or (d), the term used must be stated and must be the term of the *regulated mortgage contract* in accordance with *MCOB 5.6.6R(4)* or the term after which the equity share becomes payable, if less;

- (2) Section 5 ‘Overall cost of this mortgage’ of the *illustration* must contain the following text at the end of the section:

**“The APR and the total amount you must pay do not take account of the share that [insert name of *mortgage lender*] takes in any increase in the value of your property as described in Section 3. So you should not use these measures to compare this mortgage with other mortgages that do not involve [insert name of *mortgage lender*] taking a share in any increase in the value of your property.”; and**

- (3) Section 10 ‘What happens if you do not want this mortgage any more?’ must contain the following text at the end of the first sub-heading ‘Early repayment charges’:

**“Remember to add the cost of paying any share in the value of the property to [insert name of *mortgage lender*] – see Section 4.”**

5.6.130 G The requirements in *MCOB 5.6.129R(1)(c)* and (d) may be presented in a tabular format.

**Risk warning**

5.6.131 R The requirements at *MCOB 5.6.129R(1)* must be immediately followed by the following additional text, prominently displayed (see *MCOB 2.2.9G*):

**“You will need to pay this share in the value of your property either as a lump sum or through extra loan payments. Think carefully about whether you can afford this.”**

**Deferred interest rate mortgages**

5.6.132 R If the interest rate charged on the *regulated mortgage contract* is deferred, *MCOB 5.6* applies with the following additions:

- (1) A section headed: ‘Effect of deferring interest on the amount you owe’ must be included in the *illustration* after Section 6.
- (2) This section must be numbered 6a so that the numbering follows on consecutively from the preceding section unless *MCOB 5.6.55R* applies in which case it should be numbered 6b.
- (3) Under the section heading the following text must be included:

“This table shows the effect of the deferred interest being added to the amount you owe”; and

if the interest rate is variable:

“The amounts shown in this table could be considerably different if the interest rate changes.”
- (4) Under the text in (3), a table must be included showing each year or part year that the interest rate charged on the *regulated mortgage contract* is deferred, in the format set out in *MCOB 5 Ann 1R* and containing the following information in the columns under the following headings:
  - (a) ‘Year’: This must list the years as 1, 2, 3 and so on for each year or part year that the interest charged on the *regulated mortgage contract* is deferred. Where the interest rate charged on the *regulated mortgage contract* changes at a particular date rather than annually, the table may be adapted to accommodate this (for example, by including details of more than one interest rate each year).
  - (b) ‘Interest deferred’: This must show the percentage of interest deferred based on the rates charged on the *regulated mortgage contract* at the date the *illustration* is issued.
  - (c) ‘Amount of deferred interest added to the mortgage’: This must show the cumulative amount that is added to the loan as a cash amount as a result of deferring the payment of interest.
  - (d) ‘Remaining debt before deferred interest is added’: This must show the amount of loan outstanding on the *regulated mortgage contract* before any deferred interest is added.

- (e) **‘Remaining debt with deferred interest added’:** This must show the amounts from (4)(c) and (4)(d) added together.

**Alternative requirements for loans without a term or a regular repayment plan**

**Section 6: ‘What you will need to pay each [insert frequency of payments from *MCOB 5.6.40R*]’**

- 5.6.133 R** *MCOB 5.6.134R to MCOB 5.6.138G* apply only to loans without a term or regular payment plan where some or all of the interest rolls up, for example secured bridging loans, secured overdrafts or *mortgage credit cards*.
- 5.6.134 R** The heading for Section 6 of the *illustration* and the heading of the column on the right-hand side of this section must state the frequency with which payments must be made by the *customer*. (For example, if payments were to be made on a monthly basis, the heading for this section would be ‘What you will need to pay each month’ and the column would be headed ‘Monthly payments’). Where no regular payments are required on the *regulated mortgage contract*, for example where all interest is rolled-up on a secured bridging loan, then this section must be retained and the frequency of payments assumed must be ‘monthly’.
- 5.6.135 R** All the payments in Section 6 of the *illustration* must be calculated based on the frequency used for the purposes of the headings in *MCOB 5.6.40R* and must be shown in the column on the right-hand side of this section. If no payments are required, for example on a secured bridging loan or secured overdraft, then this column should be marked on the *illustration* as nil.
- 5.6.136 R** Section 6 of the *illustration* must contain the following information:
- (1) the loan amount on which the *illustration* is based. Where fees are being added to the loan then this figure should include all fees, charges and insurance premiums that have been added to the loan in accordance with *MCOB 5.6.18R(2)* and *MCOB 5.6.18R(3)*, and the following text must follow the loan amount:
- “and includes the fees [and insurance premiums] that are shown in Section 8 [and Section 9] as being added to your mortgage.”;
- (2) the assumed start date that has been used in the *illustration* must be stated using the following text:
- “This illustration assumes that the mortgage will start on [insert assumed start date].”;

- (3) where no payments are required (or no payments are allowed), for example a secured bridging loan or secured overdraft, then section 6 of the *illustration* should state if no payments are required or no payments can be made; or
- (4) where a minimum payment is required, for example on a *mortgage credit card*:
  - (a) a statement that a minimum payment will be required;
  - (b) an explanation of the basis on which this has been calculated, for example a percentage of the loan amount;
  - (c) if this monthly payment is insufficient on its own to repay the *regulated mortgage contract* over the term specified, the following text:
 

“This payment will not be sufficient to repay the mortgage over the term specified”; and
  - (d) the amount that the *customer* must pay, recorded in the right-hand column of this section.

5.6.137 G An example of the statement required by *MCOB* 5.6.136R(3) would be:

“You [do not need to/cannot] make regular payments on this mortgage.”

5.6.138 G An example of *MCOB* 5.6.136R(4) would be:

“You need to make minimum payments as follows:

3% of the amount outstanding £x.xx

This payment will not be sufficient to repay the mortgage over the term specified.”

**Section 7: ‘Are you comfortable with the risks?’**

5.6.139 R *MCOB* 5.6.140R to *MCOB* 5.6.145R apply only to loans without a term or regular payment plan where some or all of the interest rolls up, for example secured bridging loans, secured overdrafts or *mortgage credit cards*.

5.6.140 R Under the section heading ‘Are you comfortable with the risks?’,:

- (1) under the sub-heading ‘What if interest rates go up?’ the *illustration* must include the following:

- (a) if the interest rate is fixed throughout the term of the *regulated mortgage contract*, an explanation that the interest rate will not vary because the interest rate is fixed;
- (b) if the interest rate is fixed for part of the term of the *regulated mortgage contract*, an explanation of when or how increases in the interest rate charged on the *regulated mortgage contract* affect the amount the *customer* must pay back;
- (c) if the interest rate cannot go above or below a certain level, or both, throughout the term of the *regulated mortgage contract*, an explanation that this is the case;
- (d) if the interest rate cannot go above or below a certain level for part of the term of the *regulated mortgage contract*, an explanation that this is the case and of when or how increases in the interest rate charged on the *regulated mortgage contract* affect the amount the *customer* must pay back;
- (e) except where (2)(a) or (2)(b) apply, Section 7 of the *illustration* must include the following text:

“The total amount you must pay back shown in this illustration could be considerably different if interest rates change. For example, for one percentage point increase in [describe the interest rate that applies], the total amount you must pay back will increase by around £[insert amount by which the *total amount payable* will increase].”.

(2) paragraph (1)(e) does not apply:

- (a) where the interest rate is fixed throughout the term of the *regulated mortgage contract*; and
- (b) where the difference between the interest rate included in the *illustration* in accordance with *MCOB 5.6.25R(2)* and the maximum interest rate that can be charged on the *regulated mortgage contract* is less than one percentage point.

(3) under the sub-heading ‘What if your income goes down?’:

“You will still have to pay your mortgage if you lose your job or if illness prevents you from working. Think about whether you could do this.”



- 5.6.141 R The amount by which the *total amount payable* would increase in accordance with *MCOB 5.6.140R(1)(e)* must be calculated as follows:
- (1) unless the total amount borrowed is used, it must be assumed that all payments due on the *regulated mortgage contract* have actually been paid, all additional fees and payments due have been paid, and no under or overpayments have been made;
  - (2) unless the total amount borrowed is used, the calculation must be based on the amount of the loan outstanding from the earliest point at which the interest rate charged on the *regulated mortgage contract* can vary; for example, if the *regulated mortgage contract* has an initial fixed interest rate, this will be from the point at which the fixed interest rate ends;
  - (3) the interest rate from which the increase is calculated must be the variable interest rate charged on the *regulated mortgage contract* at the date that the *illustration* is issued (that is, the variable interest rate quoted in Section 4 of the *illustration*); where the variable interest rate changes after a set period or on a set date, it must be based on the initial variable interest rate charged on the *regulated mortgage contract* at the date the *illustration* is issued. (For example, if the initial interest rate is discounted, it must be based on the discounted rate.)

**Risk warning**

- 5.6.142 R Unless *MCOB 5.6.140(2)(a)* or (b) applies, the following words must be prominently displayed at the end of the sub-section ‘What if interest rates go up?’:

“Rates may increase by much more than this so make sure you can afford this loan.”

- 5.6.143 R The following words must be prominently displayed at the end of the sub-section ‘What if your income goes down?’:

“Make sure you can afford your mortgage if your income falls”.

- 5.6.144 G For guidance on prominence see *MCOB 2.2.9G*.

- 5.6.145 R The following text must be included at the end of Section 7 ‘Are you comfortable with the risks?’:

“The FSA’s guide ‘You can afford your mortgage now, but what if...?’ will help you consider the risks. You can get a free copy from [www.fsa.gov.uk/consumer](http://www.fsa.gov.uk/consumer), or by calling 0845 606 1234.”

- 5.7 Business loans**
- 5.7.1 R** Where the *regulated mortgage contract* is for a business purpose, a *firm* may choose to provide a *business illustration* (in compliance with *MCOB 5.7.2R*) instead of complying with *MCOB 5.6*.
- 5.7.2 R** A *business illustration* provided to a *customer* must:
- (1) use the headings and prescribed text in *MCOB 5 Ann 1R* (except as provided in *MCOB 5.7*) but need not follow the format;
  - (2) include the content required by *MCOB 5.6.3R* to *5.6.130R* (except *MCOB 5.6.5R*, *MCOB 5.6.101R*, *MCOB 5.6.109R* – *MCOB 5.6.112G* and *MCOB 5.6.121R*);
  - (3) use the key facts logo followed by the text ‘about this [term used by the *firm* to describe the borrowing, for example ‘mortgage’]’;
  - (4) use font sizes and typefaces consistently throughout the *business illustration* which are sufficiently legible so that the *business illustration* can be easily read by a typical *customer*;
  - (5) ensure that the information is clearly laid out (for example, through the use of bullet points or similar devices to separate information);
  - (6) describe any *early repayment charge* as an ‘early repayment charge’ and not use any other expression to describe such charges;
  - (7) describe any *higher lending charge* as a ‘higher lending charge’ and not use any other expression to describe such charges; and
  - (8) include the risk warning described in *MCOB 5.6.124R*, or an equally clear and effective variation of this reflecting the nature of the *regulated mortgage contract*.
- 5.7.3 G**
- (1) *MCOB 5.7.2R(1)* means that *firms* do not have to follow the ordering of sections set down in *MCOB 5.6*, although they may choose to do so.
  - (2) In accordance with *MCOB 5.7.2R(8)* an example of an appropriate variation to the risk warning would be:  
  
“Your home may be repossessed if you are unable to fulfil the terms of this secured overdraft”.

- (3) A *firm* may also choose to include other information beyond that required by *MCOB 5.6*. However, when adding additional material a *firm* should have regard to:
  - (a) the intended use of the *business illustration* as an aid to comparison by *customers*;
  - (b) the requirement in *MCOB 2.2.6R* that any communication should be clear, fair and no misleading.
- (4) The *business illustration* provided in accordance with *MCOB 5.7.2R* should be based upon the total borrowing that the *firm* is willing to provide under the *regulated mortgage contract*. This means that there is no requirement for a *firm* to provide a further *business illustration* (or *business offer document*) where a *customer* redraws against payments made under the *regulated mortgage contract*, providing this redrawing does not exceed the borrowing described in the original *business offer document*.
- (5) *MCOB 5.6.6R(4)* requires that where the term of the *regulated mortgage contract* is open-ended, the *business illustration* must be based on an assumed term of 12 months and that this assumption must be stated. This does not mean that a *firm* is limited in the actual term of the *regulated mortgage contract*. A *firm* is able to include in the *business illustration* an explanation that while a 12 month term has been assumed for the purpose of the *business illustration*, the *regulated mortgage contract* itself will be open-ended.

- 5.7.4 R Any *business illustration* provided by a *firm* must be limited to facilities provided under a *regulated mortgage contract*.
- 5.7.5 R *MCOB 5.6.31R(2)*, *MCOB 5.6.52R(1)* and *MCOB 5.6.52R(4)* prescribe text that should be used to remind a *customer* with an *interest-only mortgage* that there is a need to separately arrange for the repayment of capital. The options for repayment of capital may be different where the *regulated mortgage contract* is for a business purpose, and a *firm* must vary the prescribed wording in the *business illustration* to reflect this. One approach may be for the *firm* to revise the wording to reflect how the *customer* has said he will repay the capital.
- 5.7.6 R
  - (1) When providing a *business illustration* in accordance with *MCOB 5.7.2R* a *firm* should describe facilities provided under the *regulated mortgage contract* that are not a loan within section 12 (Additional features) of the *business illustration*.
  - (2) In complying with (1), a *firm* should follow the requirements in *MCOB 5.6.92R – MCOB 5.6.108G* where

these are relevant. Where the facility is of a type not considered in *MCOB 5.6.92R – MCOB 5.6.108G* the *firm* should provide in section 12:

- (a) a brief description of the facility involved;
- (b) the term of the facility if different from the term described elsewhere in the *business illustration*; and
- (c) a summary of any charges, including any *early repayment charges*, which apply to the operation of the facility.

**(3) Full information on any facility described in section 12 must be provided in supplementary materials that accompany the *business illustration*.**

5.7.7

G

- (1) In accordance with *MCOB 5.7.6R(1)*, where the *regulated mortgage contract* includes a loan, the facilities described in section 12 of the *business illustration* should include the existence of, and a simple explanation of, any all monies charge, any contingent liabilities such as guarantees and so on.
- (2) Where the *regulated mortgage contract* includes more than one loan facility (such as a secured loan and a separate secured overdraft facility) the *business illustration* should be based upon the primary facility and describe any other loan within section 12.

**The illustration: table of contents, prescribed text and prescribed section headings and subheadings.**

1. This annex belongs to *MCOB 5.6.2R*.
2. The underlined text indicates instructions that must not be included in the *illustrations* provided to *customers*.

## keyfacts about this mortgage

**Personalised illustration for:** insert *customer's* name – see *MCOB 5.6.15R(1)*

**Date Produced:** insert date – see *MCOB 5.6.15R(2)*

Insert details of how long the *illustration* is valid for, and if appropriate when the mortgage needs to commence by – see *MCOB 5.6.15R(3)*

This is not a legally binding mortgage offer and it does not oblige [name of *mortgage lender*] to provide you with the mortgage described in this illustration.

### 1. About this illustration

- We are required by the Financial Services Authority (FSA) - the independent watchdog that regulates financial services – to provide you with this illustration.
- All firms selling mortgages are required to give you illustrations like this one, that contain similar information presented in the same way.
- Ensure that you obtain other illustrations if you want to compare this mortgage with mortgages from other lenders.

### 2. Which service are we providing you with?

	<b>We recommend</b> , having assessed your needs, that you take out this mortgage.
	<b>We are not recommending</b> a particular mortgage for you. However, based on your answers to some questions, we are giving you information about this mortgage so that you can make your own choice.

### 3. What you have told us

See MCOB 5.6.18R to MCOB 5.6.24G

### 4. Description of this mortgage

See MCOB 5.6.25R to MCOB 5.6.30G

For *foreign currency mortgages* see also MCOB 5.6.127R to MCOB 5.6.128R

For *shared appreciation mortgages* see also MCOB 5.6.129R to MCOB 5.6.131R

### 5. Overall cost of this mortgage

See MCOB 5.6.31R to MCOB 5.6.38R

See MCOB 5.6.34R to MCOB 5.6.36G

The total amount you must pay back, including the amount borrowed is

£[insert details]

This means you pay back

£[insert details] for every £1 borrowed

The overall cost for comparison is

[insert details]% APR

See MCOB 5.6.37R

For *shared appreciation mortgages* see MCOB 5.6.129R(2)

### 6. What you will need to pay each [insert frequency of payments from MCOB 5.6.40R e.g. monthly]

[insert frequency of payments from MCOB 5.6.40R e.g. monthly] payments

See MCOB 5.6.41R to MCOB 5.6.51R

Insert amounts(s)

For multi-part mortgages see MCOB 5.6.54R

For mortgages without a term or a regular payment plan (e.g. secured bridging loans or mortgage credit cards) see MCOB 5.6.134R to MCOB 5.6.138G

<p><u>This box is required only where all or part of the mortgage is an interest-only mortgage. It must be deleted for repayment mortgages.</u></p> <p><b>Cost of repaying the capital</b></p> <p>See <i>MCOB 5.6.52R to MCOB 5.6.53G</i></p>	<p><u>Insert amounts(s)</u></p>
<p><u>This section is required only for multi-part mortgages where there is a future change in the interest rate(s) charged. It must be numbered as a subset (e.g. 6a) to follow the preceding section.</u></p> <p><b>6a. What you will need to pay in future</b></p>	<p><b><u>[insert frequency of payments from MCOB 5.6.40R e.g. monthly] payments</u></b></p>
<p>See <i>MCOB 5.6.55R to MCOB 5.6.57G</i></p>	<p><u>Insert amounts(s)</u></p>

<p><u>This section is required only for deferred interest rate mortgages. It must be numbered as a subset (e.g. 6b) to follow the preceding section.</u></p> <p><b>[...]. Effect of deferring interest on the amount you owe</b></p>				
<p>This table shows the effect of the deferred interest being added to the amount you owe. <u>Where the interest rate is variable:</u> The amounts shown in the table could be considerably different if the interest rate changes.</p> <p>See <i>MCOB 5.6.132R</i></p>				
Year	Interest deferred	Amount of deferred interest that is added to the mortgage	Remaining debt before deferred interest is added	Remaining debt with deferred interest added

<p><b>7. Are you comfortable with the risks?</b></p>
<p>See <i>MCOB 5.6.59R to MCOB 5.6.65R</i></p> <p>For mortgages without a term or a regular payment plan (e.g. secured bridging loans or <i>mortgage credit cards</i>) see <i>MCOB 5.6.140R to MCOB 5.6.145R</i></p>

8. What fees must you pay?	Fee amount
<b>Fees payable to</b> [insert name of <i>mortgage lender</i> ] See <i>MCOB 5.6.66 to MCOB 5.6.71G</i>	<u>Insert amount of each fee</u>
<b>Other Fees</b> See <i>MCOB 5.6.66 to MCOB 5.6.71G</i>	<u>Insert amount of each fee</u>

9. Insurance	<u>insert frequency of payments for premium quoted payments</u>
<b>Insurance you must take out through</b> <u>[insert name of <i>mortgage lender or mortgage intermediary</i>]</u> See <i>MCOB 5.6.73R to MCOB 5.6.76G</i>	<u>Insert amount(s) if appropriate</u>
<b>Insurance you must take out as a condition of this mortgage but that you do not have to take out through</b> <u>[insert name of <i>mortgage lender or mortgage intermediary</i>]</u> See <i>MCOB 5.6.77R to MCOB 5.6.83G</i>	<u>Insert amount(s) if appropriate</u>
<u>This box is required only where quotations for optional insurance are provided in the <i>illustration</i></u> <b>Optional Insurance</b> See <i>MCOB 5.6.80R to MCOB 5.6.83G</i>	<u>Insert amount(s)</u>

10. What happens if you do not want this mortgage any more?
<b>Early repayment charges</b> See <i>MCOB 5.6.84R to MCOB 5.6.89R</i>  <b>What happens if you move house?</b> See <i>MCOB 5.6.84R(2)</i>

11. What happens if you want to make overpayments?
See <i>MCOB 5.6.90R to MCOB 5.6.91G</i>



## 12. Additional features

See MCOB 5.6.92R to MCOB 5.6.112G

## 13. Using a mortgage intermediary

[This section is required only when the *illustration* is provided to a *customer* by, or on behalf of, a *mortgage intermediary*. If the *illustration* is provided by a *mortgage lender*, this section must be removed and Section 14 must be renumbered Section 13]

See MCOB 5.6.113R to MCOB 5.6.1190G

## [...]. Where can you get more information about mortgages?

The FSA publishes useful guides on choosing a mortgage. These are available free through its website: [www.fsa.gov.uk/consumer](http://www.fsa.gov.uk/consumer), or by calling 0845 606 1234. The website also provides Comparative Tables to help you shop around.

## Contact Details

See MCOB 5.6.122R to MCOB 5.6.123G

**Your home may be repossessed if you do not keep up repayments on your mortgage** – see MCOB 5.6.124R to MCOB 5.6.125G

For *foreign currency mortgages* add the following risk warning (see *MCOB 5.6.128R*):

**Changes in the exchange rate may increase the sterling equivalent of your debt**

## 6 DISCLOSURE AT THE OFFER STAGE

6.1 Application

Who?

6.1.1 R This chapter applies to a *firm* in a category listed in column (1) of the table in *MCOB 6.1.2R* in accordance with column (2) of that table.

6.1.2 R Table

This table belongs to *MCOB 6.1.1R*

(1) Category of firm	(2) Applicable section
<i>mortgage lender</i>	whole chapter

What?

6.1.3 R This chapter applies with respect to an offer made by a *firm* to a *customer* with a view to the *firm*:

- (1) *entering into a regulated mortgage contract; or*
- (2) *varying the terms of a regulated mortgage contract entered into by the customer in any of the following ways:*
  - (a) adding or removing a party;
  - (b) making a further advance; or
  - (c) switching all or part of the *regulated mortgage contract* from one type of interest rate to another;

(whether or not the *customer* agrees to enter into the *regulated mortgage contract* or variation).

6.1.4 R In relation to a *regulated lifetime mortgage contract*, this chapter, *MCOB 6*, is replaced by *MCOB 9* (Lifetime mortgages - product disclosure).

6.1.5 R In *MCOB 6*, a reference to an offer to enter into a *regulated mortgage contract* is to be read as including a reference to an offer to vary an existing *regulated mortgage contract* in a manner specified in *MCOB 6.1.3R* if the context so requires.

6.1.6 G *Firms* may diverge from the requirements in *MCOB 5.6* (Content of illustrations) where necessary to reflect the fact that they are providing an *illustration* for a variation as part of an *offer document*.

## 6.2 Purpose

6.2.1 G (1) *MCOB 6* amplifies *Principle 7*, which requires a *firm* to pay due regard to the information needs of its *customers* and to treat them fairly. The purpose of *MCOB 6* is to ensure that a *customer* receives a clear *offer document* to enable him to check the features and price of the *regulated mortgage contract* before he enters into it. The *offer document* should include an updated and suitably adapted *illustration* so that the *customer* can compare it with the *illustration* he received before he applied for the *regulated mortgage contract*.

(2) To ensure that the *customer* has a record of the information required by *MCOB 6*, *MCOB 6.3.2R* requires the information to be provided to the *customer* in a *durable medium*.

## 6.3 General

6.3.1 G *MCOB 2.2.6R* (Clear, fair and not misleading communication) applies to information provided to a *customer* by a *firm* in accordance with this chapter.

6.3.2 R **Any communication required by *MCOB 6* to be provided to a customer by a firm must be in a durable medium.**

## 6.4 Content of the offer document

6.4.1 R (1) **If a firm offers to enter into a regulated mortgage contract with a customer, it must provide the customer with an offer document containing an illustration.**

(2) **The firm's offer in the offer document must be on the basis of the information set out in the illustration provided in accordance with (1).**

### Accuracy of the offer document

6.4.2 G *MCOB 5.4.7G* acknowledges that the *offer document* and *illustration* provided before an application may not always be the same, even where the *customer's* requirements have not changed. However, the *FSA* expects the *offer document* to be an accurate reflection of the actual costs of the *regulated mortgage contract*.

## Records

- 6.4.3 R (1) A *firm* must make an adequate record of each *offer document* which it issues to a *customer* in accordance with *MCOB 6*.
- (2) The record required by (1) must be retained for a year from the date that the *offer document* is issued to the *customer*.
- (3) If, in accordance with *MCOB 6.5* (Information to be provided in the offer document or separately), information is included in a separate document that is sent with the *offer document*, that information must also be retained as part of the record required by (1).

## Modifications to the illustration

- 6.4.4 R The *illustration* provided as part of the *offer document* in accordance with *MCOB 6.4.1R(1)* must meet the requirements of *MCOB 5.6* (Content of illustrations) with the following modifications:
- (1) the *illustration* must be suitably adapted and revised to reflect the fact that the *firm* is making an offer to a *customer* and updated to reflect changes to, for example, the interest rate, charges, the exchange rate or the APR required by *MCOB 10* (Annual Percentage Rate), at the date the *illustration* is issued;
- (2) *MCOB 5.6.2R(2)(a)* does not apply;
- (3) *MCOB 5.6.15R* (Information to be included at the head of the illustration) does not apply;
- (4) *MCOB 5.6.16R* (Section 1: ‘About this illustration’) is replaced by the following: “Section 1: ‘About this offer document’:

Under the section heading ‘About this offer document’, the following text must be included:

- (a) ‘You are not bound by the terms of this offer document until [insert relevant circumstances, including the names of any documents that must be signed. For example “you have signed the legal charge and the funds are released for your mortgage”].

**We are required by the Financial Services Authority (FSA) – the independent watchdog that regulates financial services – to provide you with this offer document.’; and**

**(b) (unless *MCOB* 6.6.1R applies)**

**“You should compare this offer document with the key facts illustration given to you before you applied for this mortgage, to see how the details may have changed.”;**

**(5) Unless (b) applies, *MCOB* 5.6.17R (Section 2: ‘Which service are we providing you with?’) is replaced with the following:**

**“Section 2: ‘Which service did we provide you with?’**

**(a) Under the section heading ‘Which service did we provide you with?’ the following text should be presented as two options each with a ‘check box’, one of which must be marked prominently to indicate the level of service provided to the *customer*:**

**‘We have recommended, having assessed your needs, that you take out this mortgage.**

**We have not recommended a particular mortgage for you. You must make your own choice whether to accept this mortgage offer.’;**

**(b) If the service described in *MCOB* 5.6.17R (Section 2: ‘Which service are we providing you with?’) was provided by another *firm*, *MCOB* 5.6.17R is replaced by the following:**

**“Section 2: ‘Which service were you provided with?’**

**Under the section heading ‘Which service were you provided with?’ the following text should be presented as two options each with a ‘check box’ one of which must be marked prominently to indicate the level of service provided to the *customer*:**

**‘[name of firm] recommended that you take out this mortgage.**

[name of firm] did not recommend a particular mortgage for you. You must make your own choice whether to accept this mortgage offer.”;

(6) *MCOB 5.6.29R(2)* does not apply;

(7) *MCOB 5.6.52R* to *MCOB 5.6.53G* is replaced by the following:

Where all or part of the *regulated mortgage contract* is an *interest-only mortgage*, the *illustration* in the *offer document* must:

(a) clearly state that the payments on the *regulated mortgage contract* cover only interest, and not the capital borrowed;

(b) state the *repayment vehicle* the *customer* intends to use where the *firm* knows details of the specific *repayment vehicle* from the application by the *customer*; if the *firm* does not know how the *customer* intends to repay the capital borrowed, the *firm* must clearly state that the *repayment vehicle* is unknown, and must provide the *customer* with a clear reminder of the need to put suitable arrangements in place; and

(c) include a statement reminding the *customer* to check regularly the performance of any *investment* used as a *repayment vehicle*, to see whether it is likely to be adequate to repay the capital at the end of the term of the *regulated mortgage contract*;

(8) the fees recorded in the *illustration* that is part of the *offer document* in accordance with *MCOB 5.6.66R(1)* must include any fees that have been paid by the *customer*;

(9) *MCOB 5.6.69R(5)* is replaced by the following:

‘(where the fee is payable or has been paid to the *mortgage lender*), whether or not the fee is refundable, and if so, the extent to which it is refundable;’

(10) details of insurance which the *customer* has chosen to take out through the *firm*, whether or not this insurance was included in the *illustration* provided in accordance with *MCOB 5* (Pre-application disclosure), must be

included in Section 9 of the *illustration* that is part of the *offer document*;

- (11) where additional features are included in accordance with *MCOB 5.6.92R* and these are credit facilities regulated by the Consumer Credit Act 1974, the relevant parts of Section 12 of the *illustration* that is part of the *offer document* must include the following text:

"This credit facility is regulated under the Consumer Credit Act 1974. Please refer to the separate credit agreement which describes the facility and the terms on which the credit is available";

- (12) The text required by *MCOB 5.6.102R(2)(a)* or (b) should be adapted to include, or tell the *customer* where they can find, the information required by *MCOB 6.5.4R*; and

- (13) *MCOB 5.6.113R* applies to the *illustration* that is part of the *offer document* if the *illustration* given out in accordance with *MCOB 5* (Pre-application disclosure) was issued by, or on behalf of, a *mortgage intermediary*.

- 6.4.5 G (1) One consequence of *MCOB 6.4.4R(5)(b)* is that the *mortgage lender* will need to know, for each individual transaction *arranged* by a *mortgage intermediary*, whether or not the *customer* has received *advice* from that *mortgage intermediary*.
- (2) When complying with *MCOB 6.4.4R(5)(b)*, *mortgage lenders* may wish to include a statement after the level of service in Section 2 confirming that the level of service described was given by another *firm*, and explaining that they, as the *mortgage lender*, are not responsible for the level of service given, and that the *customer* should contact the other *firm* if they have any queries about the level of service provided. For example: "If you have any queries about this service, you should contact [Name of firm]. [Name of lender] is not responsible for the advice or information you received."

6.4.6 R In adapting and revising the *illustration* that is part of the *offer document* in accordance with *MCOB 6.4.4R(1)* a *firm* must:

- (1) avoid amending the format of the information required by *MCOB 5.6* (Content of illustrations) where possible, since this could result in the *illustration* in the *offer*

*document* being difficult to compare with the *illustration* originally provided to the *customer* in accordance with **MCOB 5.5.1R**;

- (2) use, where possible, the same headings, ordering of information, and language that appeared in the *illustration* provided in accordance with **MCOB 5.6 (Content of illustrations)**; and
- (3) only change section headings where necessary (for example ‘What you have told us’ could be renamed ‘Your mortgage requirements’).

- 6.4.7**        **R**        In adapting and revising the *illustration* in accordance with **MCOB 6.4.4R(1)**, a *firm* may:
- (1) add extra information at the beginning and end of the *illustration*, such as conditions which are not covered by the *illustration*;
  - (2) include greater detail within each of the specified sections than that included in an *illustration* provided in accordance with **MCOB 5 (Pre-application disclosure)**; and
  - (3) leave blank, except for the text ‘not applicable’, sections that are irrelevant, such as:
    - (a) the section on insurance (see **MCOB 5.6.73R** to **MCOB 5.6.83G**), where the *customer* is not buying insurance from the *firm* and the *firm* does not require insurance to be in place; and
    - (b) the section and sub-sections on additional features (see **MCOB 5.6.92R** to **MCOB 5.6.112G**) if there are no additional features available.

**6.4.8**        **G**        Examples of the additional information that should be included in the *offer document* in accordance with **MCOB 6.4.7R(1)** or **MCOB 6.4.7R(2)** is information about any retentions or reinspections that will be required by the *firm*.

**6.4.9**        **R**        A *firm* must ensure that the *illustration* forms the main, and an integral, part of the *offer document*.

**6.4.10**      **G**        **MCOB 6.4.9R** prevents a *firm* from preparing a separate *illustration* and simply adding it to the existing material provided to the *customer* at the offer stage.

#### **Other information contained in the offer**



- 6.4.11 R A *firm* must ensure that the *offer document* contains a prominent statement:
- (1) of the period for which the offer is valid;
  - (2) explaining, where the *regulated mortgage contract* contains features, such as additional unsecured borrowing facilities, which could result in the *customer* borrowing more money, that where such features are used, the amount of the *customer's* debt will increase;
  - (3) explaining when any interest rate change on the *regulated mortgage contract* takes effect. This statement must be used, for example, to explain cases where an annual review system is used;
  - (4) explaining the consequences that might arise from the *customer* not entering into the *regulated mortgage contract*, including any fees that the *customer* has paid which will not be reimbursed;
  - (5) explaining that once the *regulated mortgage contract* is concluded there will be no right of withdrawal; and
  - (6) explaining that although no right of withdrawal exists the *customer* will have a right to repay the *regulated mortgage contract* in accordance with the terms of the *regulated mortgage contract*.
- 6.4.12 G In complying with *MCOB* 6.4.11R(6) the *firm* is not required to repeat in this section of the *offer document* the cash amounts of the *early repayment charges* set out in the *illustration* provided as part of the *offer document*. The *firm* may instead insert a reference to the relevant section of that *illustration*.
- 6.4.13 R A *firm* must ensure that the contact details section of the *offer document* (as required by *MCOB* 5.6.122R) also includes information on how to complain to the *firm* about the services provided by the *firm* in relation to the *regulated mortgage contract* and whether or not complaints may subsequently be referred to the *Financial Ombudsman Service*.
- 6.4.14 G *DISP* 1.2.1R requires a *firm* to have in place a complaints handling policy for handling complaints about its services, and also for referring to another *firm* complaints about that other *firm's* services.
- 6.4.15 G In addition to the information required by *MCOB* 6.4.13R, a *firm* may include information about how to complain to any other *firm* about the services that *firm* provided to the *customer* in relation to

the *regulated mortgage contract*. For example, where the customer received advice from another *firm*, a *mortgage lender* may include contact details for the *firm* that provided the advice.

**6.4.16 R** If the *firm* knows at the point that the offer is made to the *customer* that its interest in the *regulated mortgage contract* will be assigned (by sale or transfer) and the *firm* will no longer be responsible for setting interest rates and charges, the *offer document* must:

(1) state this; and

(2) state, where known, who will be responsible for setting interest rates and charges after the sale or transfer.

**6.4.17 R** Where *MCOB* 6.4.16R applies, if the name of the party who will be responsible for setting interest rates and charges after the sale or transfer is not known at the point the offer is made, the *firm* must notify the *customer* of this as soon as it becomes known.

6.4.18 G *MCOB* 6.4.16R and *MCOB* 6.4.17R could apply where the ownership of a *regulated mortgage contract* is transferred to a third party through *securitisation*.

**6.5 Information to be provided in the offer document or separately**  
**Tariff of charges**

**6.5.1 R** If a *firm* makes an offer to a *customer* with a view to entering into a *regulated mortgage contract*, it must provide the *customer*, along with the *offer document*, with a *tariff of charges* that could be incurred on the *regulated mortgage contract*.

**6.5.2 R** If the *regulated mortgage contract* has any *linked borrowing* or *linked deposits*, details of the charges on these linked facilities, for example charges payable on a linked current account, must be included in the *firm's tariff of charges*.

6.5.3 G A *firm* may include the *tariff of charges* as an integral part of the *offer document*, or provide it separately along with the *offer document*.

**Mortgage credit cards**

**6.5.4 R** If a *firm* makes an offer to a *customer* with a view to entering into a *regulated mortgage contract* that includes a *mortgage credit card*, it must provide the *customer* with information explaining that the card will not give the *customer* the statutory rights associated with traditional credit cards.

- 6.5.5 G A *firm* may include the information described in *MCOB 6.5.4R* as an integral part of the *offer document*, or provide it separately along with the *offer document*.

#### Distance contracts with retail customers

- 6.5.6 R If a *firm* makes an offer to a *retail customer* with a view to *entering into a regulated mortgage contract* which is a *distance contract*, it must provide the *retail customer* with the following information with the *offer document*:
- (1) the *EEA State* or *States* whose laws are taken by the *firm* as a basis for the establishment of relations with the *customer* prior to the conclusion of the *regulated mortgage contract*;
  - (2) any contractual clause on law applicable to the *regulated mortgage contract* or on competent court, or both;
  - (3) the language in which the contract is supplied and in which the *firm* will communicate during the course of the *regulated mortgage contract*; and
  - (4) if not provided previously:
    - (a) all of the contractual terms and conditions of the *regulated mortgage contract* to which the *offer document* relates; and
    - (b)
      - (i) confirmation that the *mortgage lender* is *authorised* and regulated by the *FSA*;
      - (ii) the *mortgage lender's FSA register* number; and
      - (iii) confirmation that the *customer* can check the *FSA register* on the *FSA's* website [www.fsa.gov.uk/register/](http://www.fsa.gov.uk/register/) or by contacting the *FSA* on 0845 606 1234.

#### 6.6 Offer documents in place of illustrations

- 6.6.1 R If a *firm* provides a *customer* with an *offer document* in place of an *illustration* in accordance with *MCOB 5.5.1R(3)*, it must take reasonable steps to ensure that it provides the *offer document* in accordance with the requirements for providing an *illustration* in *MCOB 5.4* (Illustrations: general) and *MCOB 5.5* (Provision of illustrations).

- 6.7 **Business loans**
- 6.7.1 R (1) Where the *regulated mortgage contract* is for a business purpose, a *firm* may choose to provide a *customer* with a *business offer document* instead of the *offer document* referred to in *MCOB 6.4.1R*.
- (2) If a *firm* provides a *customer* with a *business offer document* in accordance with (1), it must ensure that:
- (a) an updated *business illustration*, as required by *MCOB 5.7* (Pre-application disclosure for business loans), forms part of the *business offer document*;
- (b) subject to the tailoring required by *MCOB 5.7* (Pre-application disclosure for business loans), the *business offer document* complies with *MCOB 6.4* (Content of the offer document).
- 6.7.2 G *MCOB 6.7.1R(2)(a)* means, for example, that the required text in *MCOB 6.4.4R(8)* should be replaced by text that satisfies the requirements for *business illustrations* in *MCOB 5.7.5R*
- 6.7.3 G A *firm* may supplement the first paragraph of text prescribed in *MCOB 6.4.4R(5)(a)* to clarify that, while the *regulated mortgage contract* is not binding until the relevant mortgage document has been signed and funds have been released, the *business offer document* may form part of a wider set of negotiated facilities and that the *customer* is separately bound by these.

## 7 DISCLOSURE AT START OF CONTRACT AND AFTER SALE

### 7.1 Application

#### Who?

7.1.1 R This chapter applies to a *firm* in a category listed in column (1) of the table in *MCOB 7.1.2R* in accordance with column (2) of that table.

7.1.2 R Table

This table belongs to *MCOB 7.1.1R*

(1) Category of firm	(2) Applicable section
<i>mortgage lender</i>	<i>whole chapter</i>
<i>mortgage administrator</i>	<i>MCOB 7.1 – MCOB 7.3.3R</i> <i>MCOB 7.5 – MCOB 7.7.4R</i>
<i>mortgage adviser</i> <i>mortgage arranger</i>	<i>MCOB 7.1 – MCOB 7.3.3R</i> <i>MCOB 7.6.7R – MCOB 7.7.4R</i>

#### What?

7.1.3 R This chapter applies if a *firm*:

- (1) *enters into a regulated mortgage contract with a customer; or*
- (2) *administers a regulated mortgage contract which was entered into with a customer; or*
- (3) *arranges or advises on or makes a further advance or other variation to the terms of a regulated mortgage contract entered into with a customer.*

7.1.4 R This chapter applies in relation to further advances and other variations (as specified in *MCOB 7.6.7R – MCOB 7.7.4R*) regardless of whether they are variations to an existing *regulated mortgage contract* or are such that they involve the customer entering into a new *regulated mortgage contract*.

7.1.5 R This chapter also applies in relation to *regulated mortgage contracts* in circumstances where the original *mortgage lender*

has passed on ownership of the loan to a third party through *securitisation*. In such a case, the rules in *MCOB 7.5 – MCOB 7.7.4R* will apply to the *firm* which *administers* the *regulated mortgage contract*.

- 7.1.6 R In *MCOB 7.6.7R* (Further advances), *MCOB 7.6.18R* (Rate switches) and *MCOB 7.6.22R* (Addition or removal of a party to the contract), if a *customer* submits an informal application as his first contact with a *firm*, the *illustration* required to be provided to a *customer* in accordance with those *rules* must be provided and the transaction must not proceed until the *customer* has made a formal application confirming that it should proceed.
- 7.1.7 G *Firms* are reminded that in *MCOB*, references to “arranging” include the activities of a *mortgage lender* which would be *arranging* but for article 28A of the *Regulated Activities Order* (Arranging contracts to which the arranger is a party).
- 7.1.8 R In relation to a *regulated lifetime mortgage contract*, this chapter *MCOB 7* is replaced by *MCOB 9* (Lifetime mortgages - product disclosure).
- 7.2 Purpose
- 7.2.1 G (1) This chapter amplifies *Principle 7*, which requires a *firm* to pay due regard to the information needs of its *customers* and to treat them fairly. This chapter requires information to be supplied to *customers* at the start of the *regulated mortgage contract* to enable them to check that the *regulated mortgage contract* has been set up in accordance with their requirements and to notify them of the first and subsequent payments.
- (2) Where a *firm* provides services to a *customer* in relation to the variation of a *regulated mortgage contract*, this chapter also requires that the *customer* is provided with an *illustration* to make clear the price and features associated with that variation.
- (3) This chapter also ensures that *customers* are supplied with information which enables them to check the payments and charges on a *regulated mortgage contract*, to keep track of the transactions on, and the features of, a *regulated mortgage contract* and to be kept informed of material changes.

- (4) To ensure that a *customer* has a record of the information required by this chapter, *MCOB 7.3.2R* requires the information to be provided to the *customer* in a *durable medium*.

### 7.3 General

7.3.1 G *MCOB 2.2.6R* (Clear, fair and not misleading communication) applies to information provided to a *customer* by a *firm* in accordance with this chapter.

7.3.2 R A *firm* must provide all of the information required by this chapter in a *durable medium*.

#### Information provided in more than one document

7.3.3 R The information required by this chapter, *MCOB 7*, may be provided in more than one document, provided the use of several documents does not materially diminish the significance of any information the *firm* is required to give the *customer*, or the ease with which this can be understood.

### 7.4 Disclosure at the start of the contract

#### Disclosure requirements

7.4.1 R A *firm* that enters into a regulated mortgage contract with a *customer* must provide the *customer* with the following information before the *customer* makes the first payment under that regulated mortgage contract:

- (1) the amount of the first payment required;
- (2) the amount of the subsequent payment(s) if different from the first payment;
- (3) the method by which the payment will be collected (for example, by direct debit) and the date of collection of the first and subsequent payment;
- (4) confirmation of whether, in connection with the regulated mortgage contract, insurance or investments (such as a repayment vehicle, term assurance, buildings and contents insurance or payment protection insurance) have been purchased through the *firm*;
- (5) the first premium (and subsequent premium where different) for any insurance or investments purchased

through the *firm* in connection with the *regulated mortgage contract*;

- (6) confirmation of whether the insurance or *investment* premiums in (5) are to be collected with the mortgage payment or separately (where the latter applies, the *firm* must give details or state that these will be confirmed separately);
- (7) confirmation of whether the *regulated mortgage contract* is a *repayment mortgage* or *interest-only mortgage*, or a combination of both;
- (8) if all or part of the *regulated mortgage contract* is an *interest-only mortgage*, a reminder to the *customer* to check that a *repayment vehicle* is in place, if the *repayment vehicle* is not provided by the *firm*;
- (9) what to do if the *customer* falls into *arrears*, explaining the benefit of making early contact with the *firm*, providing the address and telephone number of a contact point for the *firm*, and drawing the *customer's* attention to the *arrears* charges set out in the *tariff of charges*;
- (10) confirmation of any *linked borrowing* and *linked deposits*; and
- (11) whether the *regulated mortgage contract* permits the *customer* to make any overpayments or underpayments of the amounts due.

7.4.2 R The information in *MCOB 7.4.1R* must be provided to the customer in a single communication, except (4), (5) and (6) which may be provided separately.

7.4.3 G In the case of a *regulated mortgage contract* under which the loan is advanced to the *customer* in separate tranches, the amount required under *MCOB 7.4.1R(1)* will be the repayment relating to the first tranche. The amount(s) required under *MCOB 7.4.1R(2)* will need to reflect the fact that when each subsequent tranche is advanced, the payment that the *customer* will need to make will change.

#### Record keeping

7.4.4 R (1) A *firm* must make and retain an adequate record of the information that it provides to each *customer* at the



start of the *regulated mortgage contract* in accordance with this section.

- (2) The record required by (1) must be maintained for a year from the date that the information is provided to the *customer*.

7.5

## Statements

### Annual statement: requirement

7.5.1

R Subject to *MCOB 7.5.2R*, a *firm* must provide the *customer* with a statement at least once a year:

- (1) covering the *regulated mortgage contract* and any *tied product* purchased through the *firm*; and
- (2) giving information about the existence of any *linked borrowing* or *linked deposits*, or any other products purchased through the *firm* where the payments for those products are combined with the payments on the *regulated mortgage contract*.

7.5.2

R Where a *tied product* is operated separately from the *regulated mortgage contract*, for example where the premiums on a tied insurance product are not combined with payments on the *regulated mortgage contract*, the statement required by *MCOB 7.5.1R* in relation to the *tied product* may be provided in a separate communication.

### Annual statement: content

7.5.3

R The statement required by *MCOB 7.5.1R* must contain the following:

- (1) except in the case of *mortgage credit cards*, information on the type of *regulated mortgage contract*, including:
  - (a) a clear statement of whether the *regulated mortgage contract* is an *interest-only mortgage*, or *repayment mortgage*, or a combination of both; and
  - (b) a prominent reminder, where all of the *regulated mortgage contract* is an *interest-only mortgage*, that:

- (i) the *customer's* payments to the *firm* do not include the costs of any *repayment vehicle* (if that is the case); and
- (ii) the *customer* should have in place arrangements to pay off the capital, and should check the performance of any *investments* they might have in place for this purpose;

using the following text:

**‘This is an interest-only mortgage. Your mortgage payments [include the costs of a savings plan/an investment that you][do not include the costs of any savings plan or other investment you may] have arranged to build up a lump sum to repay the amount you borrowed. It is important to check regularly that your savings plan or other investment is on track to repay this mortgage at the end of the term.’**

- (c) a prominent reminder, where only part of the *regulated mortgage contract* is an *interest-only mortgage*, that:
  - (i) the *customer's* payments to the *firm* do not include the costs of any *repayment vehicle* (if that is the case); and
  - (ii) the *customer* should have in place arrangements to pay off the amount of the loan that is on an *interest-only* basis, and should check the performance of any *investments* they might have in place for this purpose;

using the following text:

**‘This mortgage includes [insert amount] borrowed on interest-only terms. Your mortgage payments [include the costs of a savings plan/an investment that you][do not include the costs of any savings plan or other investment you may] have arranged to build up a lump sum to repay this amount. It is important to check regularly that your savings plan or other investment is on**

track to repay the interest-only part of your mortgage at the end of the term.’

- (2) details of the following transactions and information on the *regulated mortgage contract* during the period since the last statement (or, where the statement is the first statement, since the *customer* entered into the *regulated mortgage contract*):
  - (a) the date and amount of each payment made;
  - (b) the amount of each payment that was due during the statement period;
  - (c) the rates(s) of interest applicable to the *regulated mortgage contract* during the statement period and, if applicable, the date(s) on which the rate(s) of interest changed;
  - (d) the amount of interest charged under the *regulated mortgage contract* during the statement period; and
  - (e) any other amounts charged under the *regulated mortgage contract* during the statement period, including fees and any amounts due in relation to *tied products*;
- (3) a reminder that the *customer* should contact the *firm* if they are unable to make their regular payments under the *regulated mortgage contract*; and
- (4) information at the date the statement is issued on:
  - (a) the amount owed by the *customer* under the *regulated mortgage contract*;
  - (b) the actual remaining term of the *regulated mortgage contract* (but if the term of the *regulated mortgage contract* is open-ended this should be clearly stated);
  - (c) the date at which any *early repayment charges* on the *regulated mortgage contract* cease to apply;
  - (d) where applicable, the *early repayment charge* that applies, expressed as a monetary amount (see *MCOB 5.6.84R*);

- (e) the cost of redeeming the *regulated mortgage contract* (this must be shown as the sum of *MCOB 7.5.3R(4)(a)* and *MCOB 7.5.3R(4)(d)* plus any other charges that can be quantified at the date the statement is issued); if additional charges are payable that cannot be quantified at the point that the statement is issued (for example if the *customer* is in *arrears*) a warning must be included to that effect (see *MCOB 7.5.7R* regarding what is included in the cost of redeeming the *regulated mortgage contract*); and
- (f) where applicable, the date on which the requirement for the *customer* to purchase any *tied products* from the *firm* comes an end.

**7.5.4 R** In the limited circumstances where it would be unlikely for a *repayment vehicle* to be set up for an *interest-only mortgage* (for example, a short term bridging loan) the text in *MCOB 7.5.3R(1)(b)(ii)* or *MCOB 7.5.3R(1)(c)(ii)* is replaced with the following:

“As all or part of your mortgage is an interest-only mortgage, it assumes that you pay back the total amount borrowed on an interest-only basis as a lump sum at the end of the mortgage term.”

**7.5.5 R** Where a *firm* provides a *customer* with a statement containing the information set out in *MCOB 7.5.3R(2)* more frequently than once a year, the information set out in *MCOB 7.5.3R(1)*, *MCOB 7.5.3R(3)* and *MCOB 7.5.3R(4)* may be provided in a separate communication, but must be provided at least once a year.

**7.5.6 G** Whether a *firm* is likely to provide the information set out in *MCOB 7.5.3R(2)* more frequently than once a year will depend on the nature of the *regulated mortgage contract*. In determining how frequently to provide that information, a *firm* should take into account the need to keep the *customer* informed of any changes in the amount they owe, the *customer's* expectations and, where appropriate, the duration of the loan. For example, for a *mortgage credit card* the information might be provided monthly.

**7.5.7 R** The cost of redeeming a *regulated mortgage contract* referred to in *MCOB 7.5.3R(4)(e)* includes the full amount owed by the *customer* that must be repaid on surrendering the mortgage. This means that the balances of any *linked borrowing* that cannot be retained after the mortgage has been redeemed must

**be included in the calculation of the cost of redeeming the regulated mortgage contract.**

**Annual statement – additional content for customers in arrears**

7.5.8 G If a *firm* chooses to use the annual statement to provide a *customer* with a regular written statement in accordance with *MCOB* 13.5.1R (Statements of charges), as described in *MCOB* 13.5.2G(4), it will need to include the actual payment shortfall in the annual statement.

7.5.9 G In some circumstances, a *firm* may agree a temporary payment plan with a *customer* that does not involve the *customer* paying the full amount he owes in each payment period. Where an account in *arrears* is subject to such a payment plan, and the amount that falls due each payment period is greater than the agreed payment, the *firm* will still need to show the payments that were due in accordance with *MCOB* 7.5.3R(2)(b). However, in these circumstances, the *firm* may wish to add information to acknowledge that a temporary payment plan is in place.

**Annual statement: additional content if tariff of charges has changed**

7.5.10 R If the *tariff of charges* has changed since the last annual statement was sent to the *customer* (or, where the annual statement is the first statement, since the *customer* entered into the *regulated mortgage contract*) and a *firm* has not already sent a revised *tariff of charges* to the *customer*, it must include one with the annual statement.

7.6 Event-driven information

**Notification of payment changes and other material changes to terms and conditions**

7.6.1 R A *firm* must give the *customer* reasonable notice, in advance, of:

(1) any changes to the payments that the *customer* is required to make resulting from interest rate changes; and

(2) any material change by the *firm* (other than changes which come within *MCOB* 7.6.2R) to the terms and conditions of the *regulated mortgage contract*, where that change is permitted without the *customer's* prior consent.

Notification where the regulated mortgage contract is sold, assigned or transferred

7.6.2 R A *firm* must notify a *customer*, as soon as the details are known, of who will be responsible for setting interest rates and charges on the *regulated mortgage contract* if any interest in the *regulated mortgage contract* is to be sold, assigned, or transferred, and the *firm* will no longer be responsible for this.

7.6.3 R For the purposes of *MCOB 7.6.2R* the *firm* may be treated as continuing to be responsible for setting interest rates and charges if, under the terms of the sale, assignment or transfer, it is expected that the rates and charges will continue to be set by reference to, and be no higher than, those set by the *firm* for other contracts of the same kind.

7.6.4 G *MCOB 7.6.2R* and *MCOB 7.6.3R* may be relevant where a *regulated mortgage contract* is transferred to a third party through *securitisation*.

Notification where additional borrowing taken up

7.6.5 R Where the *customer* has, in accordance with the terms of the *regulated mortgage contract*, taken up an additional tranche of borrowing on a mortgage that is released in tranches and this did not require any further approval of the *mortgage lender*, a *firm* must provide confirmation as soon as possible of:

- (1) the new amount owed by the *customer* under the *regulated mortgage contract*;
- (2) the amount of each payment that is due; and
- (3) the interest rate charged.

7.6.6 G Examples of where *MCOB 7.6.5R* will apply are the release of tranches of money to the *customer* in relation to a self-build mortgage or other instalment mortgage.

Further advances

7.6.7 R Before a *customer* submits an application to a *firm* for a further advance on an existing *regulated mortgage contract* or for a further advance that is a new *regulated mortgage contract*, if the further advance requires the approval of the *mortgage lender*, the *firm* must provide the *customer* with an *illustration* that complies with the requirements of *MCOB 5* (Pre-application disclosure) and *MCOB 7.6.9R* to *MCOB 7.6.17R* for

**the further advance, unless an *illustration* has already been provided or the *regulated mortgage contract* is for a business purpose (see *MCOB 7.7 (Business loans)*).**

- 7.6.8 G If a number of different *firms* are involved in relation to the transaction referred to in *MCOB 7.6.7R*, having regard to *MCOB 2.5.4R(2)*, those *firms* should take reasonable steps to establish which one of them is responsible for providing the *customer* with the *illustration* required by *MCOB 7.6.7R*.
- 7.6.9 R **The *illustration* provided in accordance with *MCOB 7.6.7R* must;**
- (1) be based on the amount of the further advance only;**
  - (2) use the term ‘additional borrowing’ in place of the term ‘mortgage’ where appropriate throughout the titles and text of the *illustration*;**
  - (3) include an additional section headed: ‘Total borrowing’ and numbered ‘7a’ after Section 7, including the following text:**
    - (a) “This section gives you information about how your mortgage will be affected by taking out this additional borrowing. Talk to [your mortgage lender][insert name of mortgage lender] if you are not sure of the details of your current mortgage.”; and**
    - (b) a clear statement explaining the total amount that the *customer* will owe if he takes out the additional borrowing and what the *customer*’s new payments will be.**
  - (4) include a clear statement, where all or part of the *regulated mortgage contract* is an *interest-only mortgage* and the amount paid in each instalment does not include the cost of a *repayment vehicle*, to indicate that these payments do not include the cost of any savings plan or other investment.**
- 7.6.10 G In order to comply with *MCOB 7.6.9R(1)*, a *firm* should calculate the *APR* required by *MCOB 5.6.34R* on the basis of the further advance amount only.
- 7.6.11 G For the purposes of *MCOB 7.6.9R(3)* and (4):

- (1) a *customer's* existing mortgage includes a mortgage entered into prior to 31 October 2004 as well as a *regulated mortgage contract*;
  - (2) the frequency of payments is that in *MCOB 5.6.40R*; and
  - (3) a *firm* may generally rely on information provided by the *customer* unless, taking a common-sense view of this information, it has reason to doubt it.
- 7.6.12 G An example of the total borrowing section referred to in *MCOB 7.6.9R(3)* is in *MCOB 7 Ann 1G*.
- 7.6.13 R **Where not all of the mortgage interest rates described in accordance with *MCOB 5.6.25R(2)(a)* apply for the term of the loan part to which they apply, the *firm* must disclose the amount that will be paid in each instalment when complying with *MCOB 7.6.9R(3)(b)*, including the following information:**
- (1) when a change in payment will occur;
  - (2) the reason for the change in payment; and
  - (3) confirmation that the payment illustrated assumes rates will not change.
- 7.6.14 R **The *illustration* provided in accordance with *MCOB 7.6.7R* may diverge from the requirements of *MCOB 5 (Pre-application disclosure)* where it is necessary to do so in order to reflect the fact that the *illustration* is being provided for a further advance.**
- 7.6.15 G *MCOB 7.6.14R* allows the *firm* to make changes to wording and to add, remove or alter information that would otherwise be misleading for the *customer*. For example, the *firm* may add text to let the *customer* know if conditions applying to the original mortgage do not apply to the additional borrowing, such as ‘The early repayment charges applying to your existing loan do not apply to this additional borrowing.’
- 7.6.16 R (1) **(In the case of a *business illustration*), *MCOB 5.6.16R* is replaced with the following:**
- “Section 1: ‘About this illustration’**
- Under the section heading ‘About this illustration’, the following text must be included:**



**‘We are required by the Financial Services Authority (FSA) – the independent watchdog that regulates financial services – to provide you with this illustration.’”**

- (2) (In all other cases), *MCOB 5.6.16 R* is replaced with the following;

**“Section 1: ‘About this illustration’**

**Under the section heading ‘About this illustration, the following text must be included:**

**‘We are required by the Financial Services Authority (FSA) – the independent watchdog that regulates financial services – to provide you with this illustration.**

**All firms selling mortgages are required to give illustrations like this one, that contain similar information presented in the same way.’”**

- 7.6.17 R (1) Where the further advance for which the *customer* has applied is in the form of an annual insurance premium secured by a first legal charge, a *firm*:
- (a) may, instead of providing an *illustration* in accordance with *MCOB 7.6.7R*, provide confirmation of the matters required by *MCOB 7.6.5R*; and
- (b) where (a) applies use the following text:
- “Your annual insurance premium has been/will be added to your mortgage account [unless you pay it by dd/mm/yy]. If you choose to pay it in full on or before dd/mm/yy there will be no extra cost. If you do not, interest will be charged on the amount outstanding at [insert details of the applicable interest rate e.g. ‘the same rate as your mortgage’ or ‘the standard variable rate which is currently x%’].”**
- (2) If the insurance premium described in (1) is not an annual premium, (1)(a) and (b) apply but a *firm* must amend the text in (1)(b) to reflect the length of the contract.

### Rate switches

- 7.6.18 R Before a *customer* submits an application to a *firm* to change all or part of a *regulated mortgage contract* from one type of interest rate to another (for example, a transfer from a variable rate *regulated mortgage contract* to a fixed rate *regulated mortgage contract*, or from one fixed rate *regulated mortgage contract* to another fixed rate *regulated mortgage contract*), the *firm* must provide the *customer* with an *illustration* for the whole loan that complies with the requirements of *MCOB 5* (Pre-application disclosure), unless such an *illustration* has already been provided.
- 7.6.19 G If a number of different *firms* are involved in relation to the transaction referred to in *MCOB 7.6.18R*, having regard to *MCOB 2.5.4R(2)*, those *firms* should take reasonable steps to establish which one of them is responsible for providing the *customer* with the *illustration* required by *MCOB 7.6.18R*.
- 7.6.20 R The *illustration* provided in accordance with *MCOB 7.6.18R* may diverge from the requirements of *MCOB 5* where it is necessary to do so in order to reflect the fact that the *illustration* is being provided for a rate switch.
- 7.6.21 G *MCOB 7.6.20R* allows a *firm* to make changes to wording and to add, remove or alter information that would otherwise be misleading to the *customer*. For example, a *firm* could replace the statement in Section 3 of the *illustration*, explaining that if information provided by the *customer* changes, the *illustration* may be affected, with a statement explaining that the *illustration* is based on information gathered in the past, which may no longer be accurate.

### Addition or removal of a party to the contract

- 7.6.22 R
- (1) Except where (2) applies, before a *customer* submits an application to add or remove a party to a *regulated mortgage contract*, a *firm* must provide any *customer* who will remain or become a party to the contract with an *illustration* for the whole loan that complies with the requirements of *MCOB 5* (Pre-application disclosure).
  - (2) A *firm* is not required to provide the *illustration* required by (1) where the removal of a party to a *regulated mortgage contract* is the result of the death of that party, and no other party is to be added to the *regulated mortgage contract*.

- 7.6.23 G The *FSA* would not view a guarantor as a party to a *regulated mortgage contract*, so *MCOB 7.6.22R(1)* does not mean that someone becoming a guarantor to the *regulated mortgage contract* should receive an *illustration*.
- 7.6.24 G If a number of different *firms* are involved in relation to the transaction referred to in *MCOB 7.6.22R*, having regard to *MCOB 2.5.4R(2)*, those *firms* should take reasonable steps to establish which one of them is responsible for providing the *customer* with the *illustration* required by *MCOB 7.6.22R*.
- 7.6.25 R **The *illustration* provided in accordance with *MCOB 7.6.22R* may diverge from the requirements of *MCOB 5* (Pre-application disclosure) where it is necessary to do so in order to reflect the fact that the *illustration* is being provided in respect of the addition or removal of a party to the contract.**
- 7.6.26 G *MCOB 7.6.25R* allows the *firm* to make changes to wording and to add, remove or alter information that would otherwise be misleading to the *customer*. For example, a *firm* may choose not to include a property valuation in the ‘What you have told us’ section of the *illustration* if the property value does not have a bearing on the terms of the *regulated mortgage contract*.
- 7.6.27 R **For the purposes of *MCOB 7.6.22R*, *MCOB 5.6.17R* is replaced with the following;**
- “Section 2: ‘Which service are we providing you with?’**
- Under the section heading ‘Which service are we providing you with?’ the following text should be included:**
- ‘We are providing you with an illustration for the [addition/removal] of [a party/parties] to this mortgage. You must make your own choice about whether changing the parties to this mortgage is right for you.’”**
- Changes to the amount of each payment due**
- 7.6.28 R **If a *customer* requests, or agrees to, a change to a *regulated mortgage contract* (other than a change as described in *MCOB 7.6.7R* to *MCOB 7.6.27R*) that changes the amount of each payment due, a *firm* must provide the *customer* with the following information, in a single communication, before the change takes effect:**
- (1) the amount outstanding on the *regulated mortgage contract* at the date the change is requested;**

- (2) the payment due and the frequency of payments; where it is known that the payment will change (for example at the end of a fixed rate period), the new payment and the date of the change must also be shown;
- (3) the rate of interest applying to the *regulated mortgage contract*; where it is known that the rate of interest will change, the new rate and the date of the change must also be shown;
- (4) the type of interest rate (for example fixed, or discounted); where it is known that the type of interest rate will change the new type and the date of the change must also be shown;
- (5) where the *regulated mortgage contract* will change to an *interest-only mortgage*, a prominent reminder that the *customer* should have in place arrangements to repay the capital, using the following text:

**‘You will still owe [insert amount borrowed or, where part of the *regulated mortgage contract* is an *interest-only mortgage*, insert the amount borrowed under the *interest-only mortgage*] at the end of the mortgage term. You will need to make separate arrangements to repay this. When comparing the payments on this mortgage with your existing mortgage, remember to add any money you may need to pay into a separate savings plan to build up a lump sum to repay the amount you have borrowed.’; and**

- (6) details of any charges that apply for changing the *regulated mortgage contract*.

- 7.6.29 G Examples of where *MCOB* 7.6.28R will apply are where the *customer* requests a change from an *interest-only mortgage* to a *repayment mortgage*, requests a change to the term of his mortgage or agrees to his *arrears* being capitalised.
- 7.6.30 G If a number of different *firms* are involved in relation to the transaction referred to in *MCOB* 7.6.28R, having regard to *MCOB* 2.5.4R(2), those *firms* should take reasonable steps to establish which one of them is responsible for providing the *customer* with the information required by *MCOB* 7.6.28R.

**Use of illustrations in place of information under *MCOB* 7.6.28R**

- 7.6.31 R Where *MCOB* 7.6.28R applies, a *firm* may issue an *illustration* in accordance with *MCOB* 5 (Pre-application disclosure) in place of the information set out in *MCOB* 7.6.28R.
- 7.6.32 R Where *MCOB* 7.6.28R applies and the *customer* simultaneously requests a rate switch or the addition or removal of a party to the contract, a *firm* will not be required to provide the information in accordance with *MCOB* 7.6.28R where it is provided as part of an *illustration* issued in accordance with *MCOB* 7.6.18R or *MCOB* 7.6.22R.

**Simultaneous request for a product switch and addition or removal of a party to a contract**

- 7.6.33 G Where a *customer* simultaneously requests a product switch and the addition or removal of a party to the loan, a *firm* will not be required to provide the *customer* with a separate *illustration* for each in accordance with *MCOB* 7.6.18R and *MCOB* 7.6.22R. The *firm* may provide the *customer* with a single *illustration* that complies with the requirements of *MCOB* 5 (Pre-application disclosure) for both.

**7.7 Business loans**

- 7.7.1 R (1) Where, in relation to a *regulated mortgage contract* for a business purpose, a *customer* either:
- (a) seeks an immediate increase in the borrowing provided under the *regulated mortgage contract*; or
  - (b) overdraws on the borrowing under the *regulated mortgage contract*;
- the further advance rules in *MCOB* 7.6.7R to *MCOB* 7.6.17R do not apply.
- (2) Where (1) applies, the *firm* must within five *business days* provide the *customer* with either:
- (a) a *business illustration* for the new total borrowing; or

- (b) the following information, in a single communication:
  - (i) the new amount outstanding on the *regulated mortgage contract*;
  - (ii) details of any changes in the repayment arrangements or interest rate charged as a result of the change;
  - (iii) where there is a new *early repayment charge* or a change to the existing *early repayment charge*, the maximum amount payable as an *early repayment charge* in respect of the *regulated mortgage contract*; and
  - (iv) details of any charges that apply for changing the *regulated mortgage contract*.

7.7.2 G Where a *customer* remains in breach, for more than one month, of an agreed borrowing limit or of an obligation to repay where the *regulated mortgage contract* does not have a regular repayment plan, *firms* are reminded that *MCOB 13* (Arrears and repossessions) applies.

7.7.3 R Where a *customer* applies for a further advance that is a *regulated mortgage contract* for a business purpose and *MCOB 7.7.1R* does not apply:

- (1) the *business illustration* must be based upon the total borrowing; and
- (2) *MCOB 7.6.9R* to *MCOB 7.6.10G* and *MCOB 7.6.12G* do not apply.

7.7.4 R Where *MCOB 7.6.28R(5)* applies, a *firm* may omit the final sentence of the required text where it is aware, in the context of an *interest-only mortgage*, that the *customer's* intention is not to use a savings plan as a *repayment vehicle*.

## MCOB 7 Annex 1G

### This Annex belongs to *MCOB 7.6.12G*

An example of the Total Borrowing section

<b>7a. Total Borrowing</b>	
This section gives you information about how your mortgage will be affected by taking out this additional borrowing. Talk to your mortgage lender if you are not sure of the details of your current mortgage.	
When this additional borrowing is added to your existing mortgage, the total amount you owe will be £ x and your monthly payments based on this amount will be;	<b>Monthly Payment</b>
Initial monthly payment	£ a
After 12 months the discount period on your further borrowing will end, and assuming rates do not change, your new monthly payment will be	£ b
After 26 months the fixed rate period on a portion of your mortgage will end, and assuming rates do not change, your new monthly payment will be	£ c
Remember to add the cost of any savings plan to these monthly payments.	

## 8 LIFETIME MORTGAGES: ADVISING AND SELLING STANDARDS

### 8.1 Application

#### Who?

8.1.1 R This chapter applies to a *firm* in a category listed in column (1) of the table in *MCOB 8.1.2R* in accordance with column (2) of that table.

8.1.2 R Table

This table belongs to *MCOB 8.1.1R*

(1) Category of firm	(2) Applicable section
<i>mortgage lender</i>	whole chapter except <i>MCOB 8.5</i>
<i>mortgage adviser</i>	whole chapter
<i>mortgage arranger</i>	whole chapter except <i>MCOB 8.5</i>

#### What?

8.1.3 R This chapter applies if a *firm*:

- (1) in the course of carrying on a *regulated mortgage activity*:
  - (a) makes, or anticipates making, a *personal recommendation* about; or
  - (b) gives, or anticipates giving, personalised information relating to;
 

*the customer*:

    - (c) entering into a *regulated lifetime mortgage contract*; or
    - (d) varying the terms of a *regulated lifetime mortgage contract* entered into by the *customer*; or
- (2) in addition to (1), gives advice or personalised information to the *customer* on home reversion schemes.

8.1.4 R (1) *MCOB 4.4* (Initial disclosure requirements) (as modified by *MCOB 8*) applies only in relation to varying the terms of a *regulated lifetime mortgage contract* entered into by the *customer* in any of the following ways:

- (a) adding or removing a party;
- (b) taking out a further advance; or



(c) switching all or part of the *regulated lifetime mortgage contract* from one type of interest rate to another.

(2) Otherwise, this chapter, *MCOB 8*, applies in relation to any form of variation of a *regulated lifetime mortgage contract*.

8.1.5 G If a *firm* is an *authorised professional firm*, *MCOB 1.2.10R(3)* has the effect that when the *firm* conducts *non-mainstream regulated activities* with a *customer*, *MCOB 4.4* (Initial disclosure requirements) (as modified by *MCOB 8*) applies. The *firm* is only required to provide the initial disclosure information in *MCOB 8 Ann 1R* or *MCOB 8 Ann 2R* section 7 (What to do if you have a complaint) and section 8 (Are we covered by the Financial Services Compensation Scheme (FSCS)?).

## 8.2 Purpose

8.2.1 G The purpose of this chapter for *regulated lifetime mortgage contracts* is the same as that for *regulated mortgage contracts* in *MCOB 4*.

## 8.3 Application of rules in *MCOB 4*

8.3.1 R (1) *MCOB 4.1* to *4.6* and *MCOB 4.8* (with the modifications stated in *MCOB 8.3.3R* and *MCOB 8.3.4R*) apply to a *firm* where the *regulated mortgage contract* is a *regulated lifetime mortgage contract*.

(2) The table in *MCOB 8.3.3R* shows how the relevant *rules* and *guidance* in *MCOB 4* must be modified by replacing the cross-references in that chapter with the relevant cross-references to *rules* and *guidance* in *MCOB 8*.

(3) The table in *MCOB 8.3.4R* replaces certain *rules* and *guidance* in *MCOB 4* with *rules* and *guidance* from *MCOB 8*.

8.3.2 R In applying *MCOB 4.3* to *regulated lifetime mortgage contracts*, references to the ‘whole market’ must be read as references to the whole market for *regulated lifetime mortgage contracts*.

8.3.3 R Table of modified cross-references to other rules:

This table belongs to *MCOB 8.3.1R*.

Subject	Rule or guidance	Reference in rule or guidance	To be read as a reference to:
Advice or information from the whole market	<i>MCOB 4.3.4R(2)</i>	<i>MCOB 4.7.2R</i>	<i>MCOB 8.5.2R</i>
Initial disclosure requirements (for <i>regulated lifetime</i> )	<i>MCOB 4.4.1R(1)(c)</i>	<i>MCOB 4 Ann 1R</i>	<i>MCOB 8 Ann 1R</i>

<i>mortgage contracts only</i> )	and (3)		
Initial disclosure requirements for <i>packaged products or non-investment insurance contracts (in addition to regulated lifetime mortgage contracts)</i>	<i>MCOB 4.4.1R(1)(c) and (3)</i>	<i>MCOB 4 Ann 2R</i>	<i>MCOB 8 Ann 2R</i>
Initial disclosure requirements	<i>MCOB 4.4.3G</i>	<i>MCOB 4</i>	<i>MCOB 4 as modified by MCOB 8</i>
Additional disclosure for <i>distance mortgage mediation contracts</i>	<i>MCOB 4.5</i>		
Non-advised sales	<i>MCOB 4.8.6G</i>	<i>MCOB 4.7</i>	<i>MCOB 8.5</i>

8.3.4 R Table of rules in *MCOB 4* replaced by rules in *MCOB 8*:

This table belongs to *MCOB 8.3.1R*.

Subject	Rule(s)	Rule(s) replaced by
Advised sales	<i>MCOB 4.7</i>	<i>MCOB 8.5</i>

8.4 Initial disclosure requirements: Home reversion schemes

8.4.1 R If a *firm* gives, or anticipates giving, advice or personalised information on home reversion schemes in addition to *regulated lifetime mortgage contracts*, the initial disclosure information in *MCOB 4.4.1R* and *MCOB 4.4.7R* must be provided in respect of the home reversion schemes, as well as the *regulated lifetime mortgage contracts*, using the text set out in *MCOB 8 Ann 1R* and *MCOB 8 Ann 2R*.

8.5 Advised sales

Suitability

8.5.1 G *Principle 9* requires a *firm* to take reasonable care to ensure the suitability of its advice. In accordance with that *principle*, a *firm* should take reasonable steps to obtain from a *customer* all information likely to be relevant for the purposes of *MCOB 8.5*.

- 8.5.2 R A *firm* must take reasonable steps to ensure that it does not make a *personal recommendation* to a *customer* to enter into a *regulated lifetime mortgage contract*, or to vary an existing *regulated lifetime mortgage contract*, unless the *regulated lifetime mortgage contract* is, or after the variation will be, suitable for that *customer* (see *MCOB 4.3.4R(2)*, *MCOB 4.3.5G* and *MCOB 4.3.6G*).
- 8.5.3 R In *MCOB 8.5*, a reference to a recommendation to enter into a *regulated lifetime mortgage contract* is to be read as including a reference to a recommendation to vary an existing *regulated lifetime mortgage contract* if the context so requires.
- 8.5.4 R For the purposes of *MCOB 8.5.2R*:
- (1) a *regulated lifetime mortgage contract* will be suitable if, having regard to the facts disclosed by the *customer* and other relevant facts about the *customer* of which the *firm* is or should reasonably be aware, the *firm* has reasonable grounds to conclude that:
    - (a) the benefits to the *customer* outweigh any adverse effect on:
      - (i) the *customer's* entitlement (if any) to means-tested benefits; and
      - (ii) the *customer's* tax position (for example the loss of an Age Allowance);
    - (b) alternative methods of raising the required funds such as, in particular:
      - (i) a home reversion scheme; or
      - (ii) (where relevant) a local authority (or other) grant;are less suitable;
    - (c) where the *regulated lifetime mortgage contract* requires that payments are made to the *mortgage lender* (for example an *interest-only mortgage*), the *customer* can afford to enter into the *regulated lifetime mortgage contract*;
    - (d) the *regulated lifetime mortgage contract* is appropriate to the needs, objectives and circumstances of the *customer*; and
    - (e) the *regulated lifetime mortgage contract* is the most suitable of those that the *firm* has available to it within the scope of the service provided to the *customer*;

- (2) no recommendation must be made if there is no *regulated lifetime mortgage contract* from within the scope of the service provided to the *customer* which is appropriate to his needs and circumstances; and
- (3) if a *firm* is dealing with an existing *customer* in arrears and has concluded that there is no suitable *regulated lifetime mortgage contract* for the purposes of *MCOB 8.5.2R*, the *firm* must nonetheless have regard to *MCOB 13.3.2E(1)(a)*, (e) and (f) (see also *MCOB 13.3.4G(1)(a)* and (b)).

8.5.5 R In determining whether *MCOB 8.5.4R(1)(a)* applies, where a *firm* has insufficient knowledge of means-tested benefits and tax allowances to reach a conclusion, the *firm* must refer a *customer* to an appropriate source or sources such as the Pension Service, Inland Revenue or Citizens Advice Bureau (or other similar agency) to establish the required information.

- 8.5.6 E
- (1) In determining whether *MCOB 8.5.4R(1)(b)(ii)* applies a *firm* should:
    - (a) establish, on the basis of information given by the *customer* about his needs and objectives, whether these appear to be within the general scope of a local authority (or other) grant (for example where the *customer* requires funds for essential repairs to his property); and
    - (b) refer a *customer* to an appropriate source such as his local authority or Citizens Advice Bureau (or other similar agency) to identify whether such a grant is available to him.
  - (2) Compliance with (1) may be relied upon as tending to show compliance with *MCOB 8.5.4R(1)(b)(ii)*.

8.5.7 R If for any reason a *customer*:

- (1) declines to seek further information in accordance with *MCOB 8.5.5R* or *MCOB 8.5.6E(1)*; or
- (2) rejects the conclusion of a *firm* under *MCOB 8.5.4R(1)(b)* that alternative methods of raising the required funds are more suitable;

a *firm* can make a *personal recommendation* (in accordance with the remaining requirements of *MCOB 8.5*) where there is a *regulated lifetime mortgage contract* (or more than one *regulated lifetime mortgage contract*) that is appropriate to the needs and circumstances of the *customer*, but must confirm to the *customer*, in a *durable medium*, the basis on which the *personal recommendation* has been made.

- 8.5.8 R In determining whether *MCOB 8.5.4R(1)(b)(i)* applies, and in relation to *MCOB 8.5.4R(1)(d)*, a *firm* must consider:
- (1) whether the *customer's* requirements meet the eligibility criteria for the *regulated lifetime mortgage contract* (for example, the amount that the *customer* wishes to borrow, or the loan-to-value ratio) or a home reversion scheme;
  - (2) the *customer's* preferences for his estate (for example, whether the *customer* wishes to be certain of leaving a bequest to his family or others);
  - (3) the *customer's* health and life expectancy;
  - (4) the *customer's* future plans and needs (for example, whether the *customer* is likely to need to raise further funds or is likely to move house);
  - (5) whether the *customer* has a preference or need for stability in the amount of payments (where payments are required) especially having regard to the impact on the *customer* of significant interest rate changes in the future; and
  - (6) whether the *customer* has a preference or need for any other features of a *regulated lifetime mortgage contract* or a home reversion scheme.
- 8.5.9 G Where a *firm* sells only *regulated lifetime mortgage contracts*, *MCOB 8.5.8R* does not require the firm to assess the suitability of individual home reversion schemes.
- 8.5.10 R In relation to *MCOB 8.5.4R(1)(c)*, a *firm* must explain to the *customer* that the assessment of whether he can afford to enter into a *regulated lifetime mortgage contract* is based on:
- (1) current interest rates, which might rise in the future; and
  - (2) the *customer's* current circumstances, which might change in the future.
- 8.5.11 R In relation to *MCOB 8.5.4R(1)(c)* and (d), where a *firm* makes a *personal recommendation* to a *customer* to enter into a *regulated lifetime mortgage contract* where a main purpose is to consolidate existing debts, it must also take account of the following, where relevant, in assessing whether the *regulated lifetime mortgage contract* is suitable for the *customer*:
- (1) the costs associated with increasing the period over which a debt is to be repaid;
  - (2) whether it is appropriate for the *customer* to secure a previously unsecured loan; and

- (3) where the *customer* is known to have payment difficulties, whether it would be more appropriate for the *customer* to negotiate an arrangement with his creditors than to take out a *regulated lifetime mortgage contract*.
- 8.5.12 E (1) In assessing whether a *customer* can afford to enter into a particular *regulated lifetime mortgage contract*, a *firm* should give due regard to the following:
- (a) information that the *customer* provides about his income and expenditure, and any other resources that he has available;
  - (b) any likely change to the *customer's* income, expenditure or resources; and
  - (c) the costs that the *customer* will be required to meet once any discount period in relation to the *regulated lifetime mortgage contract* comes to an end (on the assumption that interest rates remain unchanged).
- (2) Contravention of *MCOB 8.5.12E(1)* may be relied upon as tending to show contravention of *MCOB 8.5.4R(1)(c)*.
- 8.5.13 G A *firm* may generally rely on any information provided by the *customer* for the purposes of *MCOB 8.5.4R(1)* (c) and (d) and *MCOB 8.5.8R(2)* to *MCOB 8.5.8R(6)* unless, taking a common-sense view of this information, it has reason to doubt it.
- 8.5.14 G *MCOB 8.5.4R(3)* explains that different considerations apply when making a *personal recommendation* to a *customer* in arrears. For example, the circumstances of the *customer* may mean that, viewed as a new transaction, a *customer* could not be recommended to enter into a *regulated lifetime mortgage contract*. In such cases, a *firm* will still be able to make a *personal recommendation* to that *customer* where this recommendation is, in the circumstances, a more suitable one than the *customer's* existing *regulated lifetime mortgage contract*.
- 8.5.15 G In complying with *MCOB 8.5.4R* a *firm* is not required to consider whether it would be preferable for the *customer* to:
- (1) trade down (that is release funds by selling his existing property and purchasing a less expensive property) rather than enter into a *regulated lifetime mortgage contract*;
  - (2) rent a property, rather than purchase one or enter into a *regulated lifetime mortgage contract* on his existing property; or
  - (3) delay entering into a *regulated lifetime mortgage contract* until a later date on the grounds that property prices would have changed in the intervening period, or that the interest rate in relation to the *regulated lifetime mortgage contract* would be lower, or both.

- 8.5.16 G (1) *MCOB 8.5.4R(1)(d)* does not require a *firm* to provide *advice on investments*. Whether such *advice* should be given will depend upon the individual needs and circumstances of the *customer*. Where considered relevant, *MCOB 8* does not restrict the ability of an adviser to refer the *customer* to another source of *investment advice* (for example, where the adviser is not qualified to provide *advice on investments*).
- (2) Where the scope of the *advice* provided is restricted (within the meaning of *MCOB 4.3.1R(1)(b)* or (c)), *MCOB 8.5.4R(2)* means that the assessment of suitability should not be limited to the types of *regulated lifetime mortgage contracts* which the *firm* offers. *MCOB 8.5.4R(2)* prevents a *firm* recommending the ‘least worst’ *regulated lifetime mortgage contract* where the *firm* does not have access to products appropriate to the *customer’s* needs and circumstances. It means, for example, that a *firm* dealing solely in the sub-prime market should not recommend one of these *regulated lifetime mortgage contracts* if approached for *advice* by a *customer* with an unblemished credit record.
- 8.5.17 E (1) **A *firm* should, out of all the *regulated lifetime mortgage contracts* identified as being appropriate for that *customer*, recommend the one that is the least expensive for that *customer* taking into account those pricing elements identified by the *customer* as being most important to him.**
- (2) **Compliance with (1) may be relied upon as tending to show compliance with *MCOB 8.5.4R(1)(e)*.**
- 8.5.18 G (1) With regard to *MCOB 8.5.17E(1)* different *customers* are likely to identify different pricing elements as being of most importance. For example, it may be the overall cost, a fixed or capped rate of interest, the inclusion of a ‘no negative equity’ guarantee, or the absence of *early repayment charges* that a *customer* considers most important.
- (2) *MCOB 8.5.17E(1)* does not prevent a *firm* from making a recommendation on grounds other than price. For example, it would be open to a *firm* to have regard to the speed or quality of service of different *mortgage lenders*, the policies of *mortgage lenders* on further lending or capital repayments, the underwriting stance of *mortgage lenders* or the *customer’s* wish for a *regulated lifetime mortgage contract* that is compliant with Sharia law. The obligation to satisfy *MCOB 8.5.4R(1)(e)* remains the same in such cases.
- 8.5.19 G (1) If circumstances arise in which a *firm* has reasonable grounds to conclude that there are several *regulated lifetime mortgage contracts* that would satisfy the suitability requirement in *MCOB 8.5.4R*, the *firm* will act in conformity with that *rule* if it recommends only one of those *regulated lifetime mortgage contracts*.

- (2) If for any reason a *customer* rejects a recommendation made by a *firm* (for example, on the grounds that the *mortgage lender* selected is unknown to him), the *firm* can make a further recommendation (in accordance with the requirements of *MCOB 8.5*) where there remains a *regulated lifetime mortgage contract* that is appropriate to the needs and circumstances of the *customer*.

#### Rejected recommendations

- 8.5.20 R (1) If a *customer* has:
- (a) rejected all of the *personal recommendations* made by a *firm* and requested information instead on a *regulated lifetime mortgage contract* that the *firm* does not consider suitable (and therefore could not recommend to the *customer* in accordance with *MCOB 8.5.2R*); and
  - (b) been issued with a new initial disclosure document in accordance with *MCOB 4.4.1R* or *MCOB 4.4.7R* (as modified by *MCOB 8*);
- the *firm* may be able to provide information on that *regulated lifetime mortgage contract* in the light of the information on which the *personal recommendations* in (1) were made.
- (2) If the *firm* needs to ask further questions regarding the needs and circumstances of the *customer* to be able to provide information on that *regulated lifetime mortgage contract*, the *firm* must obtain that information by asking scripted questions (in accordance with *MCOB 4.8.1R* and *MCOB 8.6*).

- 8.5.21 G A *firm* may consider it prudent to record any cases where, after all *personal recommendations* it has made to a *customer* have been rejected, it changes the nature of the service it provides (as in *MCOB 8.5.20R*) and provides the *customer* with information about a *regulated lifetime mortgage contract*.

#### Record keeping

- 8.5.22 R (1) A *firm* must make and retain a record:
- (a) of the *customer* information, including that relating to the *customer's* needs and circumstances, that it has obtained for the purposes of *MCOB 8.5*; and
  - (b) that explains why the *firm* has concluded that any *personal recommendation* given in accordance with *MCOB 8.5.2R* satisfies the suitability requirements in *MCOB 8.5.4R(1)*. This explanation must include, where this is the case, the reasons why a *personal*



*recommendation* has been on a basis other than that described in *MCOB 8.5.17E(1)*.

- (2) The record in (1) must be retained for a minimum of three years from the date on which the *personal recommendation* was made.

## 8.6 Non-advised sales

8.6.1 R In relation to *MCOB 4.8.1R* the questions used to help a *customer* select a *regulated lifetime mortgage contract* must cover the following:

- (1) the matters set out in *MCOB 8.5.8R*;
- (2) whether the *customer* has considered alternative methods of raising the required funds, and in particular;
  - (a) a home reversion scheme; and
  - (b) where relevant, grant assistance from his local authority (or other provider); and
- (3) whether the *customer* has established whether either his entitlement to means-tested benefits or his tax position or both will be adversely affected.

8.6.2 G In complying with *MCOB 8.6.1R(2)* and (3) a *firm* should encourage a *customer* to seek *advice* on a *regulated lifetime mortgage contract* if the *customer* is unsure about making their own choice. In the case of *MCOB 8.6.1R(2)(b)* and (3) a *firm* should, where relevant, encourage the *customer* to seek further information from an appropriate source such as their local authority or Citizens Advice Bureau (or other similar agency).

8.6.3 G Firms are reminded that *TC 2* sets out requirements for:

- (1) *employees* designing scripted questions for use in sales to *customers* of *regulated lifetime mortgage contracts* which do not involve *personal recommendations*; and
- (2) *employees* overseeing on a day-to-day basis the sales to *customers* of *regulated lifetime mortgage contracts* which do not involve *personal recommendations*.

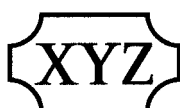
This annex belongs to *MCOB 4.4.1R* (as modified by *MCOB 8*) and *MCOB 8.4.1R*

*Firms* must omit the notes and square brackets that appear in the following IDD. The IDD must contain the key facts logo, headings and text in the order shown and in accordance with the Notes [Note 1].



## about our lifetime mortgage [and home reversion scheme] services

[Note 2] [Note 3]



Financial Services

[Note 6]  
123 Any Street  
Some Town  
ST21 7QB

[Note 4] [Note 5]

### 1. The Financial Services Authority (FSA)

The FSA is the independent watchdog that regulates financial services. It requires us to give you this document. Use this information to decide if our services are right for you.

### 2. Whose products do we offer? [Note 7] [Note 8]

- We offer products from the whole market.
- We [can] [Note 9] only offer products from a limited number of companies. Ask us for a list of the companies we offer products from. [Note 10]
- We [can] [Note 9] only offer [a limited range of the] products from [a single company] [name of single company]. [Note 11] [or] [Name of firm] [can] only offer its own products.[Note 12]

### 3. Which service will we provide you with? [Note 7]

- We will advise and make a recommendation for you after we have assessed your needs.
- You will not receive advice or a recommendation from us. We may ask some questions to narrow down the selection of products that we will provide details on. You will then need to make your own choice about how to proceed.

### 4. What will you have to pay us for this service? [Note 7]

- No fee [we will be paid by commission from the company]. [Note 13]
- A fee of £[ ] [payable at the outset and £[ ] payable when you apply for a lifetime mortgage [or home reversion scheme]].[Note 14]

You will receive a key facts illustration when considering a particular lifetime mortgage, [or further information about a particular home reversion scheme] which will tell you about any fees relating to it. [Note 3]

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## 5. Refund of fees [Note 15] [Note 16]

If we charge you a fee, and your lifetime mortgage [or home reversion scheme] does not go ahead, you will receive: [Note 3]

- A full refund [if the firm rejects your application]. [Note 17]
  - A refund of £[ ] [if the application falls through] [Note 17] [Note 18]
  - No refund [if you decide not to proceed]. [Note 17]
- 

## 6. Who regulates us? [Note 19]

[XYZ Financial Services] [123 Any Street, Some Town, ST21 7QB] [Note 20] [Note 6] is authorised [Note 21] and regulated by the Financial Services Authority. Our FSA register number is [ ]

[OR] [Name of *appointed representative*] [Note 5] is an appointed representative of [name of *firm*] [123 Any Street, Some Town, ST21 7QB] [Note 20] [Note 6] which is authorised and regulated by the Financial Services Authority. [name of *firm*]'s FSA register number is [ ]

Our permitted business is [advising on and arranging mortgages] [Note 22]

[Home reversion schemes are not regulated by the FSA] [Note 3]

You can check this on the FSA's Register by visiting the FSA's website [www.fsa.gov.uk/register](http://www.fsa.gov.uk/register) or by contacting the FSA on 0845 606 1234.

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## 7. What to do if you have a complaint [Note 19]

If you wish to register a complaint, please contact us:

...in writing Write to [XYZ Financial Services], [Complaints Department, 123 Any Street, Some Town, ST21 7QB].

... by phone Telephone [0121 100 1234]. [Note 23]

If you cannot settle your complaint with us, you may be entitled to refer it to the Financial Ombudsman Service. [The Financial Ombudsman Service does not consider complaints about home reversion schemes]. [Note 3]

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## 8. Are we covered by the Financial Services Compensation Scheme (FSCS)? [Note 19] [Note 24]

We are covered by the FSCS. You may be entitled to compensation from the scheme if we cannot meet our obligations. This depends on the type of business and the circumstances of the claim.

Mortgage advising and arranging is covered for 100% of the first £30,000 and 90% of the next £20,000 so the maximum compensation is £48,000. [Home reversion schemes are not covered by the Financial Services Compensation Scheme] [Note 3]

Further information about compensation scheme arrangements is available from the Financial Services Compensation Scheme.

### Message from the Financial Services Authority

**Think carefully about this information before deciding whether you want to go ahead.**

**If you are at all unsure about which lifetime mortgage or home reversion scheme is right for you, you should ask your adviser to make a recommendation.**

**Please remember that home reversion schemes are not regulated by the FSA.**

## **The following notes do not form part of the IDD**

**Note 1** – subject to this, a *firm* may use its own house style and brand.

**Note 2** - the *Financial Services Authority* has developed a common ‘key facts’ logo to be used on significant pieces of information directed to *customers*. The ‘key facts’ logo and the text “about our lifetime mortgage services” must be used and positioned as shown on the IDD. The logo may be re-sized, but it must be reasonably prominent and its proportions must not be distorted. When reproducing the logo, *firms* may use colour providing this does not diminish the prominence of the logo.

**Note 3** – *firms* must insert the text relating to home reversion schemes if they advise or give personalised information on home reversion schemes in addition to *advising* or giving personalised information on *regulated lifetime mortgage contracts*.

**Note 4** – insert the *firm* or *appointed representative's* name (either the name under which it is *authorised* or the name under which it trades). A corporate logo, or logos, may be included.

**Note 5** – if the IDD is provided by an *appointed representative*, insert the name of the *appointed representative*. (If an individual who is employed or engaged by an *appointed representative* provides the information, the individual should not put his or her own name on the IDD.)

**Note 6** - insert the head office or if more appropriate the principal place of business from where the *firm* or *appointed representative* expects to conduct business with *customers*. (An *appointed representative* must not include the name and address of the *authorised firm* instead of its own.).

### **Section 2: Whose products do we offer?**

**Note 7** – *firms* must select by ticking, for example, one box which is appropriate for the service that they expect to provide to the *customer*.

**Note 8** - if the IDD is provided by an *appointed representative*, the service described must be that offered by the *appointed representative*, in accordance with *MCOB 4.3.10R*.

**Note 9** – insert “can” if the *firm's* range of *regulated lifetime mortgage contracts* is determined by any contractual obligation.

**Note 10** - this sentence may be omitted if the *firm* chooses to list all of the companies it offers products from instead of the text “a limited number of companies”, in the previous line, so long as the *firm* offers all of the products generally available from each company.

**Note 11** – if the *firm* selects this box, it must insert the name of the company. If the *firm* does not tick this box, it must insert the words “a single company” instead. If the *firm* does not offer all of the products generally available from that company, it must insert the words “a limited range of”, as shown. If the company only has one product, the *firm* should amend the text to “We can only offer a product from [name of company].”

**Note 12** – if the *firm* offers only its own products, or is part of a *firm* offering only the products sold under that part’s trading name, it may use this alternative text.

#### **Section 4: What will you have to pay us for this service?**

**Note 13** – if the *firm* receives commission instead of, or in addition to, fees from the *customer*, it must insert a plain language explanation of this.

**Note 14** – insert a plain language description of when any fees are payable. This description could include, for example, a cash amount, a percentage of the loan or reversion amount or the amount per hour, as appropriate. However, where a cash amount is not disclosed, one or more examples of the cash amount must be included. If the *firm* offers more than one pricing option, it may illustrate each with a separate box.

#### **Section 5: Refund of fees**

**Note 15** – if, in section 4, it has been indicated that there will be ‘No fee’, section 5 may be omitted altogether, and the following sections re-numbered accordingly.

**Note 16** – firms must select as many boxes as are appropriate.

**Note 17** – insert a plain language description of the circumstances in which the fee is refundable or not refundable as described.

**Note 18** – the *firm* may delete this line if it does not offer a partial refund in any circumstances.

#### **Section 6: Who regulates us?**

**Note 19** – these sections may be omitted in accordance with *MCOB* 4.4.1R(3).

**Note 20** – where the *authorised firm* trades under a different name from that under which it is *authorised*, it must include the name under which it is *authorised* and listed on the *FSA register*. It may also include its trading name if it wishes.

**Note 21** - An *incoming EEA firm* will need to modify this section if it chooses to use this IDD (see *GEN* 4 Ann 1R(2)).

**Note 22** - insert a plain language description of the business for which the *firm* has *permission* in relation to *regulated lifetime mortgage contracts*.

#### **Section 7: What to do if you have a complaint**

**Note 23** – if different to the address in **Note 6**, give the address and telephone number that is to be used by *customers* wishing to complain.

#### **Section 8: Are we covered by the Financial Services Compensation Scheme?**

**Note 24** - when an *incoming EEA firm* provides the IDD, it may modify this section as appropriate.

**MCOB 8: Advising and selling**

**Annex 2 R**

**This annex belongs to *MCOB 4.4.1R* (as modified by *MCOB 8*) and *MCOB 8.4.1R*<sup>1</sup>**

[Rules and guidance for the combined IDD, for use where mortgage services are being provided at the same time as investment or insurance services, will be added here.]

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<sup>1</sup> The rules governing the use of the combined initial disclosure document were consulted upon in CP187 *Insurance selling and administration & other miscellaneous amendments* (June 2003). The final rules will be published in 2004.

## 9 LIFETIME MORTGAGES: PRODUCT DISCLOSURE

### 9.1. Application

#### Who?

9.1.1 R This chapter applies to a *firm* in a category listed in column (1) of the table in *MCOB 9.1.2R* in accordance with column (2) of that table.

9.1.2 R Table

This table belongs to *MCOB 9.1.1R*

(1) Category of firm	(2) Applicable section
<i>mortgage lender</i>	<i>MCOB 9.1 – 9.7</i>
<i>mortgage administrator</i>	<i>MCOB 9.1 – 9.4</i> <i>MCOB 9.8</i>
<i>mortgage adviser</i>	<i>MCOB 9.1 – 9.4</i>
<i>mortgage arranger</i>	<i>MCOB 9.1 – 9.4</i>

#### What?

9.1.3 R This chapter applies in the circumstances set out in other *rules* in *MCOB*, but in relation to a *regulated lifetime mortgage contract*, in accordance with the table in *MCOB 9.1.4R*.

9.1.4 R Table

This table belongs to *MCOB 9.1.3R*

Section of <i>MCOB 9</i>	Applies in relation to a <i>regulated lifetime mortgage contract</i> as set out in the following <i>MCOB</i> rules:
<i>MCOB 9.1, MCOB 9.2</i>	all of the rules below
<i>MCOB 9.3, MCOB 9.4</i>	<i>MCOB 5.1.3R</i>
<i>MCOB 9.5</i>	<i>MCOB 6.1.3R</i>
<i>MCOB 9.6</i>	<i>MCOB 7.1.3R</i>

9.1.5 R In this chapter, references to a *regulated lifetime mortgage contract* include, where the context requires, references to arrangements

which are capable of becoming a *regulated lifetime mortgage contract*.

**9.2 Purpose**

9.2.1 G The purpose of the requirements in this chapter is the same as that in *MCOB 5.2*, *MCOB 6.2* and *MCOB 7.2* in respect of *regulated lifetime mortgage contracts*.

**9.3 Pre-application disclosure**

- 9.3.1 R
- (1) *MCOB 5.1 to MCOB 5.5* (with the modifications stated in *MCOB 9.3.2R to MCOB 9.3.12R*) apply to a *firm* where the *regulated mortgage contract* is a *regulated lifetime mortgage contract*.
  - (2) The table in *MCOB 9.3.2R* shows how the relevant *rules* and *guidance* in *MCOB 5* must be modified by replacing the cross-references with the relevant cross-references to *rules* and *guidance* in *MCOB 9.3* and *MCOB 9.4*.
  - (3) The table in *MCOB 9.3.3R* replaces certain *rules* and *guidance* in *MCOB 5* with *rules* and *guidance* from *MCOB 9.3* and *MCOB 9.4*.
  - (4) The table in *MCOB 9.3.4R* disapplies certain *rules* in *MCOB 5* for the purposes of *MCOB 9*.

9.3.2 R Table of modified cross-references to other rules.

This table belongs to *MCOB 9.3.1R*.

<b>Subject</b>	<b>Rule or guidance</b>	<b>Reference in rule or guidance</b>	<b>To be read as a reference to:</b>
Variations	<i>MCOB 5.1.3R(2)</i>	<i>MCOB 7</i>	<i>MCOB 7</i> as modified by <i>MCOB 9</i>
Part of loan not a <i>regulated lifetime mortgage contract</i>	<i>MCOB 5.1.9G</i>	<i>MCOB 5.6.6R(2)</i>	<i>MCOB 9.4.6R(2)</i>
<i>Waiver of provisions</i>	<i>MCOB 5.1.10G</i>	<i>MCOB 5.6</i>	<i>MCOB 9.4</i>



<b>Purpose</b>	<b><i>MCOB 5.2.1G</i></b>	<b><i>MCOB 5</i></b>	<b><i>MCOB 5 as modified by MCOB 9</i></b>
<b>Applying for a regulated lifetime mortgage contract</b>	<b><i>MCOB 5.3.2G</i></b>	<b><i>MCOB 5.6.26R and MCOB 5.6.27R</i></b>	<b><i>MCOB 9.4.26R and MCOB 9.4.27R</i></b>
<b><i>Tied products</i></b>	<b><i>MCOB 5.4.24G</i></b>	<b><i>MCOB 5.6</i></b>	<b><i>MCOB 9.4</i></b>
<b><i>Tied products</i></b>	<b><i>MCOB 5.4.24G</i></b>	<b><i>MCOB 5.6.74R</i></b>	<b><i>MCOB 9.4.73R</i></b>
<b>Issue of offer document in place of illustration</b>	<b><i>MCOB 5.5.3G</i></b>	<b><i>MCOB 6.4 and MCOB 6.6</i></b>	<b><i>MCOB 6.4 and MCOB 6.6 as modified by MCOB 9</i></b>
<b>Customer's credit record</b>	<b><i>MCOB 5.5.16R</i></b>	<b><i>MCOB 5.5.15R(4)</i></b>	<b><i>MCOB 9.3.12R(3)</i></b>

**9.3.3 R Table of rules in *MCOB 5* replaced by rules in *MCOB 9*:**

**This table belongs to *MCOB 9.3.1R***

<b>Subject</b>	<b>Rule(s) or guidance</b>	<b>Rule(s) or guidance replaced by:</b>
<b><i>Accuracy of the illustration</i></b>	<b><i>MCOB 5.4.2R – MCOB 5.4.7G</i></b>	<b><i>MCOB 9.3.5R – MCOB 9.3.10G</i></b>
<b><i>Information that is not an illustration</i></b>	<b><i>MCOB 5.4.14R</i></b>	<b><i>MCOB 9.3.11R</i></b>
<b><i>Providing an illustration</i></b>	<b><i>MCOB 5.5.15R</i></b>	<b><i>MCOB 9.3.12R</i></b>
<b><i>Content of illustration</i></b>	<b><i>MCOB 5.6</i></b>	<b><i>MCOB 9.4</i></b>

**9.3.4 R Table of rules in *MCOB 5* which do not apply to *MCOB 9*:**

**This table belongs to *MCOB 9.3.1R*.**

<b>Subject</b>	<b>Rule(s)</b>
<b><i>Illustrations for repayment mortgages and interest-only mortgages</i></b>	<b><i>MCOB 5.5.13R</i></b>
<b>Business loans</b>	<b><i>MCOB 5.7</i></b>

- 9.3.5 R **An *illustration* on a particular *regulated lifetime mortgage contract* issued by, or on behalf of a *mortgage lender*, must be an accurate reflection of the costs of the *regulated lifetime mortgage contract*.**
- 9.3.6 R **A *mortgage intermediary* must take reasonable steps to ensure that an *illustration* which it issues, or which is issued on its behalf, other than that provided by a *mortgage lender*:**
- (1) **is accurate within the following tolerances:**
- (a) **no more than one percent or £1, whichever is the greater, below the actual figures charged by the *mortgage lender* for the following:**
- (i) **the *total amount payable* in Section 15 of the *illustration*;**
- (ii) **the amounts that the *customer* must pay by regular instalment (where payments are required), or the amounts of interest charged, in Section 8 of the *illustration*; and**
- (iii) **the amount by which the regular instalment, or the estimated amount owed, would increase following a one percentage point increase in interest rates in Section 9 of the *illustration*.**
- (b) **the *APR* in Section 15 of the *illustration* cannot be understated by more than 0.1%; and**
- (2) **except in the case of conveyancing fees and insurance premiums (where estimates may be used), is absolutely accurate in respect of other figures quoted in the *illustration* including fees payable to the *mortgage lender* or *mortgage intermediary* in Section 11 of the *illustration* and cash examples of *early repayment charges* in Section 13 of the *illustration*.**
- 9.3.7 G Given that the *APR* is presented as a percentage, and must be rounded to one decimal place in accordance with *MCOB* 10 (Annual Percentage Rate), *firms* should note that the tolerance allowed for the *APR* in *MCOB* 9.3.6R(1)(b) means that, for example, where the actual *APR* is 5.0% the quoted *APR* must be no lower than 4.9%, or where the actual *APR* is 16.0%, the quoted *APR* must be no lower than 15.9%.
- 9.3.8 G There are no restrictions on figures which are quoted as higher than those actually charged by the *mortgage lender* although this should not be purposely done in order to make one *regulated lifetime mortgage contract* look more expensive than another.

- 9.3.9 G It is the responsibility of a *mortgage intermediary* to ensure compliance with *MCOB 9.3.6R*. However, where a *firm* can show that it was reasonable for it to rely on information provided to it by another *person*, other than the *mortgage lender*, that an *illustration* was within the tolerances described in *MCOB 9.3.6R*, he may be able to rely on *MCOB 2.5.2R*, if this turns out not to be the case.
- 9.3.10 G An *offer document* may not always exactly match the *illustration* provided before application even when the loan requirements have not changed. For example, where a fixed rate has a defined end date, the *total amount payable* may be different because the number of payments at the fixed rate has reduced, or the estimated amount of interest to be charged has changed, assuming a later date at which the *regulated lifetime mortgage contract* will start.
- 9.3.11 R Where *MCOB 5.4.13R(2)* applies:
- (1) if the *customer* initiates the accessing of quotation information on screen (for example, by using the internet or interactive television), the following warning must be displayed equally prominently on each page on screen:

“This information does not contain all of the details you need to choose a lifetime mortgage. Make sure that you read the separate key facts illustration before you make a decision.”.
  - (2) a *firm* must not provide a customised print function where the information on the screen would not be in the form of an *illustration* if the information were printed in hard copy.
- 9.3.12 R In meeting a request under *MCOB 5.5.1R(2)(c)*, the *firm* must not delay the provision of the *illustration* by requesting information other than:
- (1) the information necessary to personalise the *illustration* in accordance with *MCOB 9.4.6R*, if the *firm* does not already know it;
  - (2) where the *firm* acts in accordance with *MCOB 5.5.11R(2)*, such information as is necessary to ascertain whether or not the contract will be a *regulated lifetime mortgage contract*;
  - (3) where the interest rates, payments (if required) or any other terms and conditions to be included in the *illustration* are dependent on the *customer's* credit record, such information as is necessary to produce an *illustration*;
  - (4) where the *firm* includes a quotation for any *tied products* or compulsory insurance in the *illustration*, such information as is necessary to produce those quotations; and

- (5) where the *customer* agrees to receive a quotation for insurance in the *illustration* (other than that provided for in (4)), such information as is necessary to produce those quotations

## 9.4 Content of illustrations

### Purpose

- 9.4.1 G *MCOB 9.4* sets out the required content of an *illustration* for a regulated lifetime mortgage contract provided to a *customer* by a *firm*.

### Content, order, format etc

- 9.4.2 R An *illustration* provided to a *customer* must:

- (1) contain the material set out in *MCOB 9 Annex 1R* in the order and using the numbered section headings, sub-headings and prescribed text in *MCOB 9 Annex 1R*, except where provided for in *MCOB 9.4*;
- (2) follow the format of the template in *MCOB 9 Annex 1R*, with:
  - (a) prominent use of the key facts logo followed by the text ‘about this lifetime mortgage’ (if a *firm* resizes the logo it must ensure that the proportions remain consistent with the original design, so as not to distort it in any way);
  - (b) each section clearly separated;
  - (c) all the amounts set out in Sections 6, 8, 11, 12 and 15 in columns that make the amounts clear; and
  - (d) no section split across different pages except where it is impractical not to do so;
- (3) use font sizes and typefaces consistently throughout the *illustration* which are sufficiently legible so that the *illustration* can be read easily by a typical *customer*;
- (4) ensure that the information within each section is clearly laid out (for example, through the use of bullet points or similar devices to separate information);
- (5) include prominent headings with the numbered section headings clearly differentiated in some way from the other text in the *illustration* (for example, through the use of larger and more prominent fonts, the use of shading or colour);

- (6) replace '[name of *mortgage lender*]' with the name of the *mortgage lender* providing the *regulated lifetime mortgage contract*; a trading name used by the *mortgage lender* may be stated, as long as the name of the *mortgage lender* is also disclosed in Section 5 of the *illustration* in accordance with *MCOB 9.4.24R(1)*
- (7) describe any *early repayment charge* as an 'early repayment charge' and not use any other expression to describe such charges;
- (8) describe any *higher lending charge* as a 'higher lending charge' and not use any other expression to describe such charges; and
- (9) describe any *regulated lifetime mortgage contract* as a 'lifetime mortgage' and not use any other expression to describe such a mortgage or omit that description from the name given to any product that meets the definition.

9.4.3

G

- (1) *Firms* can obtain from the *FSA* website <http://www.fsa.gov.uk> a specimen of the 'key facts' logo. When reproducing the logo *firms* may use colour providing this does not diminish the prominence of the logo.
- (2) *MCOB 9.4.2R(3)* does not prevent the use of different fonts and typefaces for headings and risk warnings. Its purpose is to prevent particular sections of the *illustration* from being made less prominent than other sections through the inconsistent use of font sizes and typefaces.
- (3) The *illustration* can contain the *mortgage lender's* or *mortgage intermediary's* logo and other 'brand' information, so long as the requirements of *MCOB 9.4* are satisfied.
- (4) The *illustration* can contain page numbers and other references that aid understanding, record keeping and identification of a particular *illustration*, such as the date and time an *illustration* is produced or a unique reference number, provided these do not detract from the content of the *illustration*.
- (5) *Firms* are reminded of their general obligation for communications to *customers* to be clear, fair and not misleading. Sections of the *illustration* may be split across pages where it is practical to do so. When splitting sections, *firms* should split the section at an appropriate place, for example at the end of a sub-section, and not split risk warnings or tables (unless the length of the table is greater than one page).

- 9.4.4 R A *firm* must include in the *illustration* all prescribed section headings in *MCOB 9 Annex 1R*, except that:
- (1) in Section 8 (What you owe and when):
    - (a) Section 8 (A) (details of mortgage payments) is only required where the *customer* is required to make payments to the *mortgage lender* in respect of the capital or all or part of the interest charged on the *regulated lifetime mortgage contract*;
    - (b) Section 8(B) (projection of roll-up of interest) is only required where all or part of the interest on the *regulated lifetime mortgage contract* is rolled-up;
  - (2) Section 16 (Using a mortgage intermediary) is required only where the *illustration* is provided to the *customer* by, or on behalf of, a *mortgage intermediary*; and
  - (3) where the *illustration* is issued in connection with a further advance in accordance with *MCOB 9.8.5R*, an additional section ‘Total borrowing’ must be inserted after Section 8, and must be numbered ‘9’, with all subsequent sections renumbered accordingly.

Content: required information

- 9.4.5 R The *illustration* provided to a *customer* must:
- (1) contain only the material specified in *MCOB 9.4* and no other material except where provided for elsewhere in *MCOB 9.4*; and
  - (2) be in a document separate from any other material that is provided to the *customer*.
- 9.4.6 R As a minimum the *illustration* must be personalised to reflect the following:
- (1) the specific *regulated lifetime mortgage contract* in which the *customer* is interested;
  - (2) the amount of the loan required by the *customer*, or for *drawdown mortgages*, the amount the *customer* wishes to draw down on a monthly (or such frequency that amounts are available) basis. Where the amount the *customer* can draw down is variable, the *firm* must agree with the *customer* an expected amount to be drawn down per year (see *MCOB 9.4.13*);

- (3) **the price or value of the property on which the *regulated lifetime mortgage contract* would be secured (estimated where necessary);**
  - (4) **such information relating to the *customer*, or the property, or both as is necessary to determine that the *customer* would qualify for the *regulated lifetime mortgage contract* in question; and**
  - (5) **the estimated term of the *regulated lifetime mortgage contract*, calculated in accordance with *MCOB 9.4.10R*.**
- 9.4.7 G A *firm* should not illustrate more than one *regulated lifetime mortgage contract* in the same *illustration*, for example by using one *illustration* to compare alternative products.
- 9.4.8 G *MCOB 9.4.6R* sets out minimum requirements. The *illustration* may be personalised to a greater degree if the *mortgage lender* or *mortgage intermediary* wishes, subject to the restrictions on the information that can be obtained from the *customer* in *MCOB 9.3.12R* when the *illustration* is provided in accordance with *MCOB 5.5.1R(2)(c)*.
- 9.4.9 G In relation to *MCOB 9.4.6R(3)*, in order for the *firm* to comply with the principle of “clear, fair and not misleading” in *MCOB 2.2.6R*, an estimated valuation, where the estimated valuation is not that provided by the *customer*, must be a reasonable assessment based on all the facts available at the time. For example, an overstated valuation could enable a more attractive *regulated lifetime mortgage contract* to be illustrated on the basis of a lower ratio of the loan amount to the property value – for example, one with a lower rate of interest.
- 9.4.10 R (1) **In estimating a term under *MCOB 9.4.6R(5)* a *firm* must:**
- (a) **use the following mortality table: the PA92 (male or female as appropriate) pensioners’ 1991-94 table amounts, projected forward to 2010 from the Continuous Mortality Investigation Reports 16 and 17, published by the Institute of Actuaries and the Faculty of Actuaries in 1998 and 1999 respectively; and**
  - (b) **for the purposes of the *illustration*, where the table does not result in a life expectancy expressed in whole years, the term should be rounded up to the next whole year (for example, if the result is between fifteen and sixteen years, an estimated term of sixteen years should be used in the *illustration*).**
- (2) **Where the term estimated using the mortality table set out in (1) is less than fifteen years, the *firm* should use a term of fifteen years in preparing the *illustration*.**

- 9.4.11 R Where the *illustration* is issued to two or more *customers* who intend to borrow jointly, the term estimated in accordance with *MCOB 9.4.10R* should be based on the longest life expectancy.
- 9.4.12 R If the *customer* requests an *illustration* showing a term of the *customer's* choice, that *illustration* must be issued in addition to the *illustration* showing the term calculated in accordance with *MCOB 9.4.10R*. The term chosen should be stated in Section 4 of the *illustration* 'What you have told us' (see *MCOB 9.4.21R(2)*).
- 9.4.13 R The amount referred to in *MCOB 9.4.6R(2)* is:
- (1) the amount that the *customer* has asked to borrow or draw down; or
  - (2) where the *regulated lifetime mortgage contract* is a revolving credit agreement such as a secured overdraft or *mortgage credit card*, the total borrowing that the *firm* is willing to provide under the *regulated lifetime mortgage contract*; or
  - (3) in cases where, on the basis of the information obtained from the *customer* before providing the *illustration*, it is clear that the *customer* would not be eligible to borrow or draw down the amount he requested, an estimate of the amount that the *customer* could borrow or draw down, based on the information obtained from the *customer*.
- 9.4.14 G *MCOB 9.4.13R(3)* does not require information to be obtained from the *customer* before providing an *illustration* in order to ascertain the amount the *customer* is eligible to borrow. Instead, its purpose is to avoid a *firm* being in a position where it would otherwise have to provide a *customer* with an *illustration* for an amount it knew the *customer* would not be eligible for, based on whatever information it had obtained from the *customer* before providing the *illustration*.
- 9.4.15 R Where the *illustration* relates to a *regulated lifetime mortgage contract* that is sub-divided into different parts with different types of interest rate or different rates of interest or different conditions, or a combination of these, the requirements in *MCOB 9.4* may be adapted to accommodate this. The adaptations made must be limited to those that are necessary.
- 9.4.16 G *MCOB 9.4.15R* applies where, for example, the *regulated lifetime mortgage contract* is divided so that a certain amount is payable on a fixed interest rate, and a certain amount on a discounted interest rate.
- Information to be included at the head of the illustration**
- 9.4.17 R The following information must be included at the head of the *illustration*:
- (1) the *customer's* name;



- (2) the date of issue of the *illustration*;
- (3) details of how long the *illustration* is valid for, and whether there is any date by which the *regulated lifetime mortgage contract* covered by the *illustration* needs to commence (for example, where a fixed interest rate is only available if the *regulated lifetime mortgage contract* commences before a certain date); and
- (4) the prescribed text at the head of the *illustration* in *MCOB 9 Annex 1R*.

**Section 1: ‘About this information’**

**9.4.18 R** Under the section heading ‘About this information’, the prescribed text in *MCOB 9 Annex 1R* under this heading must be included.

**Section 2: ‘Which service are we providing you with?’**

**9.4.19 R** (1) Unless (2) applies, under the section heading ‘Which service are we providing you with?’ the prescribed text in *MCOB 9 Annex 1R* under this heading must be included with a ‘check box’ for each statement, one of which must be marked prominently to indicate the level of service provided to the *customer*.

(2) If the level of service described in the *illustration* is provided by another *firm*, (1) may be replaced by the following:

Under the section heading ‘Which service are we providing you with?’ the following text should be presented as two options with a ‘check box’ for each option, one of which must be marked prominently to indicate the level of service provided to the *customer*:

“[name of *firm*] recommends, having assessed your needs, that you take out this lifetime mortgage.

[name of *firm*] is not recommending a particular lifetime mortgage for you. However, based on your answers to some questions, it is giving you information about this lifetime mortgage so that you can make your own choice, or find out about other ways in which you may be able to release equity from your home.”.

**Section 3: ‘What is a lifetime mortgage?’**

**9.4.20 R** Under the section heading ‘What is a lifetime mortgage?’, the prescribed text in *MCOB 9 Annex 1R* under this heading must be included.

#### Section 4: ‘What you have told us’

- 9.4.21 R
- (1) Under the section heading ‘What you have told us’, the *illustration* must state the information that has been obtained from the *customer* under *MCOB 9.4.6R* and *MCOB 9.3.12R* (apart from *MCOB 9.4.6R(1)* and *MCOB 9.4.6R(5)* which are provided for in Section 5 of the *illustration*), and can include brief details of any other information that has been obtained from the *customer* and used to produce the *illustration*.
  - (2) Where the *customer* requests an additional *illustration* showing a term of their choice, the term chosen by the *customer* must be stated in this section, together with a statement to the effect that the term is the *customer’s* choice.
  - (3) If the amount on which the *illustration* is based includes the amount that the *customer* wants to borrow or draw down plus charges and other payments that have been added to the loan or amount to be drawn down:
    - (a) except where (b) applies, this section must include the following text after the loan amount or amount to be drawn down from *MCOB 9.4.13R(1)*:

“plus £[insert total amount of fees and other charges added to the loan] for fees that have been added to the loan [or amount drawn down] – see Section 11 for details.”; or
    - (b) where there are other fees or charges that the *customer* must pay that have not been added to the loan this section must include the following text after the loan amount or amount to be drawn down from *MCOB 9.4.13R(1)*:

“plus £[insert total amount of fees and other charges added to the loan] for fees that have been added to the loan [or amount drawn down]. These and the additional fees that you need to pay are shown in Section 11.”.
  - (4) If the amount on which the *illustration* is based includes the amount that the *customer* wants to borrow plus insurance premiums (other than a *higher lending charge* or where the premium is repaid over a term of 12 months or less) that have been added to the loan or amount to be drawn down;
    - (a) except where (b) applies, this section must include the following text after the loan amount or amount to be drawn down from *MCOB 9.4.13R(1)* (which may

be combined with the prescribed text in (3) if applicable):

“plus £[insert amount of premium to be added to the loan] for insurance premiums that have been added to the loan [or amount drawn down] – see Section 12 for details.”; or

- (b) where there are other insurance premiums that the *customer* must pay that have not been added to the loan this section must include the following text after the loan amount or amount to be drawn down from *MCOB* 9.4.13R(1) (which may be combined with the prescribed text in (3) if applicable):

“plus £[insert amount of premium to be added to the loan] for insurance premiums that have been added to the loan [or amount drawn down]. These and any additional insurance premiums that you need to pay are shown in Section 12.”.

- (5) If the amount on which the *illustration* is based does not involve any charges or payments being added to the amount to be borrowed or amount to be drawn down, but there are charges that must be paid by the *customer*, Section 4 of the *illustration* must include the following text after the loan amount from *MCOB* 9.4.13R(1):

“No fees have been added to this amount but the fees you need to pay are shown in Section 11.”.

- (6) If the *regulated lifetime mortgage contract* on which the *illustration* is based has no charges or payments that must be paid by the *customer* (that is there are no fees to pay in Section 11), and no insurance premiums are being added to the loan, Section 4 of the *illustration* must include the following text after the loan amount from *MCOB* 9.4.13R(1):

“We do not charge any fees for this lifetime mortgage.”.

9.4.22 R At the end of Section 4 of the *illustration* a statement must be included making clear that changes to any of the information obtained from the *customer*, and where appropriate to the valuation of the property, could alter the details elsewhere in the *illustration*, and encouraging the *customer* to ask for a revised *illustration* in this event.

9.4.23 G An example of the type of statement that would satisfy *MCOB* 9.4.22R is:

“The valuation that will be carried out on the property, and changes to any of the information you have given us, could alter the information in this illustration. If this is the case please ask for a revised illustration.”

**Section 5: ‘Description of this mortgage’**

- 9.4.24 R** Under the section heading ‘Description of this mortgage’ the *illustration* must:
- (1)** state the name of the *mortgage lender* providing the *regulated lifetime mortgage contract* to which the *illustration* relates (a trading name used by the *mortgage lender* may also be stated in accordance with *MCOB 9.4.2R(6)*), and the name, if any, used to market the *regulated lifetime mortgage contract*;
  - (2)** include a statement describing the *regulated lifetime mortgage contract*;
  - (3)** if the *regulated lifetime mortgage contract* is linked to an *investment*, and payments required on the *regulated lifetime mortgage contract* will be deducted from the income from the *investment*, include a statement that this is the case;
  - (4)**
    - (a)** provide a description of the interest rate type and rate of interest that applies in accordance with the format described in *MCOB 9.4.26R* and *MCOB 9.4.27R*;
    - (b)** where there is more than one interest rate type or rate of interest, specify the amount of the loan to which each interest rate type and rate of interest applies;
    - (c)** unless the interest rate applies for the full life of the loan, confirm what interest rate will apply, when it will apply and for how long it will apply after any initial interest rate ends, in accordance with the format described in *MCOB 9.4.26R* and *MCOB 9.4.27R*; and
    - (d)** provide a clear explanation of the charging approach where different interest rates are applied to different items of debt (for example, for a *mortgage credit card* where a different interest rate applies to balances that are transferred from that charged on any additional borrowing);
  - (5)** include a statement regarding the term of the *regulated lifetime mortgage contract* using the following text:

**“We have based this illustration on an estimated term of [insert number of years] years, but remember that the term of this lifetime mortgage is not fixed and could be longer or shorter than [insert number of years] years. If you are still living in your home at the end of [insert number of years] years, the lifetime mortgage will continue to run.”;**

**(6) include a statement of the maximum amount the *customer* may borrow from the *mortgage lender* and the circumstances (if any) in which the *customer* may be able to borrow additional funds at a future date; and**

**(7) if the *customer* is obliged to buy any *tied products* under the *regulated lifetime mortgage contract* include the following information:**

**(a) details of the *tied products* required;**

**(b) the following text**

**“You are obliged to take out [insert details of the *tied product(s)*] through [insert name of *mortgage lender* or if relevant, name of *mortgage intermediary*] as a condition of this lifetime mortgage. Please refer to Section 12 of this illustration for further details.”;**

**(8) state very briefly any restrictions that apply to the availability of the *regulated lifetime mortgage contract* (for example, if it is only available to certain types of *customer*);**

**(9) where the interest rate, payments (if required) or terms and conditions of the *regulated lifetime mortgage contract* in the *illustration* reflect a *customer’s* adverse credit history, include the following text:**

**“The terms of this lifetime mortgage reflect past or present financial difficulties.”; and**

**(10) where the intention of the *regulated lifetime mortgage contract* is solely to provide the *customer* with a *mortgage credit card* (rather than the *mortgage credit card* being an additional feature of a *regulated lifetime mortgage contract*) include the warning about the loss of statutory rights from *MCOB 9.4.102R(2)(a)* or *(b)* in Section 5 of the *illustration* rather than Section 14.**

9.4.25 G Examples of types of statement that would satisfy *MCOB 9.4.24R(2)* are as follows (more than one may apply to particular types of *regulated lifetime mortgage contract*):

**(1) For a *roll-up of interest mortgage*:**

“You do not have to make any repayments during the life of this lifetime mortgage. The loan, all of the interest and charges due to [name of *mortgage lender*] will be repaid from the sale of your home. This will happen on your death [or the death of the last borrower] or if you move home (either into another property or into sheltered accommodation or residential care). Any money left over would be paid to you or your beneficiaries.”.

[If only a part of the interest is rolled up the statement should specify the amount or proportion of the loan on which the interest will be rolled-up].

(2) For a *drawdown mortgage*:

“This lifetime mortgage provides you with a cash sum every month [or such other frequency as is applicable, including ‘on request’] until it is repaid. [Include if applicable: You will also receive a lump sum payment at the start of the lifetime mortgage].”.

(3) For an *interest-only mortgage*:

“This is an interest only lifetime mortgage, which means that you have to make [insert frequency of payments] payments to [name of *mortgage lender*] until the lifetime mortgage is repaid. The amount you owe will stay the same over the life of the mortgage unless fees or charges have to be added. The mortgage will be repaid from the sale of your home on your death [or the death of the last borrower] or if you move home (either into another property or into sheltered accommodation or residential care). Any money left over would be paid to you or your beneficiaries.”.

**9.4.26 R MCOB 9.4.27R sets out some examples of descriptions of interest rate types and rates of interest that must be used in the *illustration* to comply with MCOB 9.4.24R(4). If an interest rate is not described in MCOB 9.4.27R, it must be presented in the *illustration* in a way that is consistent with the descriptions in MCOB 9.4.27R.**

**9.4.27 R Description of interest rate types and rates of interest.**

**This table belongs to MCOB 9.4.26R:**

<b>Description of the interest rate</b>	<b>Amount payable in each instalment (if applicable)</b>
<b>Lender’s base mortgage rate – must be described as the [Lender]’s standard variable rate, currently X% [where applicable insert the date at which the interest rate ends or period for which the interest rate applies].</b>	<b>Amount based on X%.</b>
<b>Fixed rate – must be described as fixed rate of X% [where applicable insert the date at which the interest rate ends or the period for which the interest rate applies].</b>	<b>Amount based on the fixed rate of X%.</b>
<b>Discounted rate – must be described as a variable rate, currently X% with a discount of Y% [where applicable insert the date at which the discount ends or the period for which the discount applies] giving a current rate payable of Z%.</b>	<b>Amount based on Z%.</b>
<b>Capped rate – must be described as a variable rate, currently X% which will not go above a ceiling of Y% [where applicable insert the date at which the capped interest rate ends or the period for which the capped interest rate applies].</b>	<b>Amount based on the current interest rate payable (X%).</b>
<b>Capped and collared – must be described as a variable rate, currently X% which will not go below a floor of Y% or above a ceiling of Z% [where applicable insert the date at which the capped and collared interest rate ends or the period for which the capped and collared interest rate applies].</b>	<b>Amount based on the current interest rate payable (X%).</b>
<b>Tracker rate – must be described as a variable rate which is [X% above/X% below/the same as] [insert interest rate tracked, currently Z%] [where applicable insert the date at which the interest rate ends or the period for which the interest rate applies] to give a current rate payable of Y%. Details should also be provided of how soon after an interest rate change the mortgage interest rate is adjusted.</b>	<b>Amount based on Y%.</b>
<b>Deferred rate – must be described as a variable rate, currently X% where Y% is not paid now but is added to your mortgage [where applicable insert the date at which the deferred interest rate ends or the period for which the deferred interest rate applies] to give a current rate payable of Z%.</b>	<b>Amount based on Z%.</b>
<b>Stepped rate where different interest rates apply over different time periods (for example, fixed interest rate in year 1 changes in year 2). Each element should be dealt with individually as above.</b>	<b>Amount for each of the ‘steps’.</b>

Combinations of the above must be treated in the same way as the descriptions above, (for example, if a discounted interest rate has a ‘floor’ then it must be described as such).	Follow the above treatment depending on the combination.
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- 9.4.28 R Where the loan under the *regulated lifetime mortgage contract* is divided into more than one part (for example where part of the loan is a fixed interest rate and part of the loan is a discounted variable interest rate) and the *firm* displays this in a tabular format in the *illustration*:
- (1) the following text must be used to introduce the table “As this lifetime mortgage is made up of more than one part, these parts are summarised below:”;
  - (2) each part must be numbered for ease of reference in the *illustration*;
  - (3) the ‘initial rate payable’ must be displayed separately from the interest rate description;
  - (4) the loan amounts must be totalled; and
  - (5) immediately following the table, a statement of what interest rates will apply to each part, (and when they will apply) after any initial interest rate ends in accordance with *MCOB 9.4.24R(4)(c)*.
- 9.4.29 R Further information about the *regulated lifetime mortgage contract* may be included in Section 5 of the *illustration* as long as it does not significantly:
- (1) duplicate information contained elsewhere in the *illustration*; and
  - (2) extend the length of this section.
- 9.4.30 G An example of further information that may be included in accordance with *MCOB 9.4.27R* might be that an ‘approval in principle’ has been granted subject to valuation and satisfactory credit reference.
- Section 6: ‘Benefits’**
- 9.4.31 R Under the section heading ‘Benefits’, the *illustration* must include:
- (1) a description of the monetary amount(s), and in a box aligned to the right of the document, the monetary amount(s) that the *customer* will receive as a lump sum and/or as a monthly [or such other frequency as is applicable] payment;



- (2) where the *regulated lifetime mortgage contract* is linked to an *investment*, and the payments required on the *regulated lifetime mortgage contract* will be deducted from the income from the *investment*, the monetary amount of the net income the *customer* will receive. This must be shown in a box immediately underneath that required in (1) and containing the subheading ‘Your net income’; and
- (3) if applicable, statements of any other benefits, incentives and guarantees that apply to the *regulated lifetime mortgage contract*. This must be shown under the subheading ‘Other benefits and incentives’.

9.4.32 G Examples of text that would satisfy MCOB 9.4.31R(1), depending on the nature of the *regulated lifetime mortgage contract*, are:

- (1) “This lifetime mortgage will provide a lump sum of £[x].”;
- (2) “The amount you are borrowing will automatically be used to purchase a [name of linked *investment* product] from [name of provider]. The amount is £[x].”; and
- (3) “You will receive a monthly [or such other frequency as is applicable] payment from the start of your lifetime mortgage. This will be £[state amount].”.

#### Section 7: ‘Risks – important things you must consider’

9.4.33 R The *illustration* must include under the heading ‘Risks – important things you must consider’ statements and warnings on the following:

- (1) a brief statement of the specific circumstances in which the *mortgage lender* is able to *repossess* the property;
- (2) a statement of how the *mortgage lender* will treat any negative equity arising during the life of the *regulated lifetime mortgage contract* and at the time the amount borrowed under the *regulated lifetime mortgage contract* is due to be repaid in full;
- (3) a statement of the effect of the *customer* wanting or needing to move home (either into another property or into sheltered accommodation or long term care or residential care), covering the circumstances in which the *regulated lifetime mortgage contract* is portable, and whether *early repayment charges* are payable (the *illustration* is not required to include under this heading the exact amount of any *early repayment charges*);
- (4) a statement of the effect on the *regulated lifetime mortgage contract* of another party moving into the property (for

example on marriage or where a family member acts as a carer);

- (5) a brief statement of the *mortgage lender's* requirements for repair and maintenance of the property, including the *mortgage lender's* right (if any) to enter the property to effect essential repairs, and the circumstances in which this may occur;
- (6) a warning that taking out this *regulated lifetime mortgage contract* may affect the *customer's* tax and welfare benefits position, that tax and welfare benefits can change and that the *customer* should consider seeking further information from the Inland Revenue, Benefits Agency or another source of advice such as a Citizens' Advice Bureau;
- (7) a brief statement as to whether the *customer* can secure borrowing from any other source on the property in the future (and if applicable a warning that an increasing debt may mean that it may not be possible to borrow more in the future); and
- (8) a statement included prominently at the end of Section 7: 'Risks – important things you must consider' using the following specified text:

“Check that this mortgage will meet your needs if you want your family or others to inherit your home. If you are in doubt, seek independent legal and financial advice.”.

9.4.34 G For guidance on prominence see *MCOB 2.2.9G*.

9.4.35 R Under the heading 'Risks – important things you must consider' the *illustration* must also include the following if they apply:

- (1) for *drawdown mortgages* where there is a monthly (or such other frequency as may apply) cash sum payable, a statement that inflation can erode the value of the cash sum over time;
- (2) where:
  - (a) the *regulated lifetime mortgage contract* is linked to an *investment*; and
  - (b) the payments required on the *regulated lifetime mortgage contract* will be deducted from the income from the *investment*; and
  - (c) the *customer* will receive a fixed net income;

a statement that inflation can erode the value of the cash sum over time;

- (3) for *drawdown mortgages*, details of any circumstances where the *mortgage lender* may alter or discontinue payments to the *customer* without their prior consent;
- (4) for all *regulated lifetime mortgage contracts*, a statement or warning with regard to any material issue not covered elsewhere in *MCOB 9.4.33R* and *MCOB 9.4.35R*.

## Section 8: 'What you will owe and when'

### (A) 'Details of mortgage payments'

- 9.4.36 G The section headed 'What you will owe and when' (A) 'Details of mortgage payments' will apply only where the *customer* is required to make payments to the *mortgage lender* during the life of the *regulated lifetime mortgage contract* in respect of all or part of the interest, or part of the capital, charged on the *regulated lifetime mortgage contract*. This will include those cases where the interest payment is deducted from the income provided by a linked *investment product* (such as an annuity) such that the *customer* receives the net income.
- 9.4.37 R The heading for Section 8 of the *illustration* and the heading of the column on the right-hand side of this section must state the frequency with which payments must be made by the *customer*. (For example, if payments are to be made on a monthly basis, the heading for this section must be 'What you will need to pay each month' and the column must be headed 'Monthly payments'.)
- 9.4.38 R All the payments in Section 8 of the *illustration* must be calculated based on the frequency used for the purposes of the heading in *MCOB 9.4.37R* and must be shown in the column on the right-hand side of this section.
- 9.4.39 R Section 8 of the *illustration* must contain the following information:
- (1) the loan amount on which the *illustration* is based. This figure should include all fees, charges and insurance premiums that have been added to the loan in accordance with *MCOB 9.4.21R(3)* and *MCOB 9.4.21R(4)*, and the following text must follow the loan amount:  
  
"which includes the [fees] [and] [insurance premiums] that are shown in [Section 11] [and] [Section 12] as being added to your lifetime mortgage.";
  - (2) the assumed start date that has been used in the *illustration* to estimate the number of payments to be charged at given interest rates must be stated using the following text:

“This illustration assumes that the lifetime mortgage will start on [insert assumed start date].”;

- (3) except where *MCOB 9.4.47R* applies, for each of the interest rates charged on the *regulated lifetime mortgage contract*:
- (a) the number of payments at that interest rate;
  - (b) whether the interest rate is fixed or variable;
  - (c) the interest rate charged on the *regulated lifetime mortgage contract* at the time the *illustration* is issued; and
  - (d) the amount that the *customer* must pay in each instalment at that interest rate, which must be recorded in the right-hand column of this section (see *MCOB 9.4.38R*);
- (4) where the payment due to the *mortgage lender* is to be deducted from the income provided by a linked *investment product* (such as an annuity) such that the *customer* receives the net income, a clear statement to this effect.

- 9.4.40 G If appropriate, the two statements required by *MCOB 9.4.39R(1)* and *MCOB 9.4.39R(2)* may be merged, for example “These payments are based on a loan amount of £x and assume that the lifetime mortgage will start on [dd/mm/yy].”.
- 9.4.41 G *MCOB 9.4.39R(3)* applies to each interest rate charged on the *regulated lifetime mortgage contract* covered by the *illustration*. This means that it applies to different interest rates charged at different times, for example, where the interest rate changes at the end of any initial discounted, fixed or other special interest rate period.
- 9.4.42 G The *firm* may determine the assumed start date in *MCOB 9.4.39R(2)*.
- 9.4.43 R **The following information must be included in the description of the interest rate required by *MCOB 9.4.39R(3)(c)* except where *MCOB 9.4.47R* applies:**
- (1) where the interest rate can change, the word “currently” must be used to illustrate the current interest rate payable; and
  - (2) where the interest rate changes after a given period the words “followed by” should be used to indicate this.
- 9.4.44 G An example of how the information required by *MCOB 9.4.39R(3)* and *MCOB 9.4.43R* may be presented when there is an example term of fifteen years, and an initial fixed interest rate for a period of 22 months

followed by the *mortgage lender's* standard variable interest rate for a period of 158 months, is as follows:

“22 payments at a fixed rate of [...]%

followed by

158 payments at a variable rate, currently [...]%.”.

**9.4.45 R** The information required by *MCOB 9.4.39R(3)(d)* must exclude the cost of any products which may be sold in conjunction with the *regulated lifetime mortgage contract* (whether *tied products* or not) unless the cost has been added to the *regulated lifetime mortgage contract*.

**9.4.46 R** If, because of the assumed start date of the *regulated lifetime mortgage contract*, the initial payment differs from the subsequent payments, the initial payment must be shown in this section in accordance with *MCOB 9.4.39R(3)(d)*.

#### **Multi-part mortgages**

**9.4.47 R** Where the loan under the *regulated lifetime mortgage contract* is divided into more than one part (for example, where part of the loan is on a fixed interest rate and part on a discounted variable interest rate) and the *firm* displays the initial cost of all parts, and the total cost, in a tabular format in the *illustration*, *MCOB 9.4.39R(3)* and *MCOB 9.4.43R* do not apply; instead:

- (1) each part must be numbered for ease of reference in the *illustration*;
- (2) the loan amounts must be totalled;
- (3) the number and frequency of each payment must be stated;
- (4) the ‘initial interest rate payable’ for each part must be displayed;
- (5) whether the interest rate payable is fixed or variable for each part must be stated; and
- (6) the regular payment for each part must be stated and the total payment for all parts highlighted (excluding the information listed in *MCOB 9.4.45R*).

**9.4.48 R** Unless all of the interest rates described in *MCOB 9.4.47R(4)* apply for the life of the loan part to which they apply, then an additional sub section titled ‘What you will owe in future’ must be included to indicate the future stepped payments. This section must:

- (1) state when a change in payment will occur;

- (2) state the reason for the change in payment; and
- (3) confirm that the payment illustrated assumes that interest rates will not change.

## Section 8 ‘What you will owe and when’

### (B) Projection of roll-up of interest

- 9.4.49 G Section 8 headed ‘What you will owe and when’ (B) ‘Projection of roll-up of interest’ applies only where all or part of the interest due over the life of the *regulated lifetime mortgage contract* is added to the loan and paid to the *mortgage lender* on repayment of the loan. The projection should be based on the term of the *regulated lifetime mortgage contract* estimated in accordance with *MCOB 9.4.10R* (and if required, *MCOB 9.4.12R*).
- 9.4.50 R **An explanation of the table required in accordance with *MCOB 9.4.51R* must be shown in a box immediately under the heading using the following text:**
- “This shows how the amount(s) paid to you and the interest and any fees that we charge mount up over [insert number of years estimated in accordance with *MCOB 9.4.10R* or *MCOB 9.4.12R*] years. It has been calculated using the current interest rate(s) of [insert interest rate(s)]. Interest is added to the amount you owe [insert frequency of roll-up of interest – e.g. monthly]. Remember that the mortgage could run for a longer or shorter time than [insert number of years estimated in accordance with *MCOB 9.4.10R* or *MCOB 9.4.12R*] years, and if it runs for longer, the amount you owe will carry on increasing.”.**
- 9.4.51 R The table showing the projection in the section headed ‘Projection of roll-up of interest’ should show annual details in columns under the following headings:
- (1) ‘Year’: this should list the years as 1,2,3...etc. The start date for year one must be an assumed date of completion of the *regulated lifetime mortgage contract*. The table must show each year of the term estimated in accordance with *MCOB 9.4.10R* (or if required, *MCOB 9.4.12R*).
  - (2) ‘Balance at start of year’: this must show the estimated amount outstanding on the *regulated lifetime mortgage contract* at the beginning of each year. For year one this balance would include any lump sum advanced on completion.
  - (3) (where the *regulated lifetime mortgage contract* is a *drawdown mortgage*) ‘Amount paid to you during the year’: this must include all amounts to be drawn down during the

year in question. Where the amount the *customer* can draw down is variable, the *mortgage lender* must agree with the *customer* an expected amount to be drawn down per year.

- (4) ‘Interest charged at [insert percentage(s)] per year’: this must be the interest charge for the year in question, calculated on the balance at the start of the year plus the amount drawn down during the year (if applicable). The percentage(s) used must be as follows:
- (a) for a fixed interest rate that applies throughout the term, the fixed interest rate available at the date the *illustration* is issued;
  - (b) for a variable interest rate, the interest rate that is available at the time the *illustration* is issued; and
  - (c) for a capped interest rate, the actual interest rate that is available at the time the *illustration* is issued, where this is lower than the interest rate at which the cap is set.

Where more than one interest rate applies (e.g. fixed for part of the term, followed by variable), the *mortgage lender* must use the rates that are available at the time the *illustration* is issued.

- (5) ‘Fees charged during the year’: this must include all fees that can be added to the loan during the life of the *regulated lifetime mortgage contract*. In year one this will include any fees due to the *mortgage lender* unless the *customer* has confirmed that he wishes to pay them separately.

The fees for the final year shown must include any fees required on repayment in full of the *regulated lifetime mortgage contract*.

- (6) ‘What you owe at the end of the year’: this is the total of:
- (a) the balance at start of the year;
  - (b) total drawn down (if applicable);
  - (c) interest charged for the year; and
  - (d) fees for the year.

The balance at the end of the final year of the term (estimated in accordance with *MCOB 9.4.10R* (or if required, *MCOB 9.4.12R*)) must therefore be the estimated amount required to repay in full the *regulated lifetime mortgage contract* at the end of that year.

9.4.52 G The firm may determine the assumed date of completion in MCOB 9.4.51R(1).

**Section 9: ‘Will the interest rate change?’**

9.4.53 R Where the *customer* is required to make payments to the *mortgage lender* on the *regulated lifetime mortgage contract*, the *illustration* must include the following under the section heading ‘Will the interest rate change?’:

- (1) if the interest rate is fixed throughout the life of the *regulated lifetime mortgage contract*, an explanation that the payments will not vary because the interest rate is fixed;
- (2) if the interest rate is fixed for part of the life of the *regulated lifetime mortgage contract*, an explanation of when or how increases in the interest rate charged on the *regulated lifetime mortgage contract* affect the *customer’s* payments;
- (3) if the interest rate cannot go above a certain level or below a certain level, or both, and this applies throughout the life of the *regulated mortgage lifetime contract*, an explanation that this is the case;
- (4) if the interest rate cannot go above a certain level for part of the life of the *regulated lifetime mortgage contract*, an explanation that this is the case and of when or how increases in the interest rate charged on the *regulated lifetime mortgage contract* affect the *customer’s* payments;
- (5) if (3) or (4) apply the maximum or minimum interest rate, or both, and the payments at each of these interest rates; and
- (6) if the *regulated lifetime mortgage contract* is made up of a number of different parts including different types of interest rate and different rates of interest, an explanation of when or how increases in the interest rate charged on the *regulated lifetime mortgage contract* affect the *customer’s* payments for each part (or combination of parts).

9.4.54 R (1) Except where (3) applies, where the *customer* is required to make payments to the *mortgage lender* on the *regulated lifetime mortgage contract*, and the *customer’s* payments can vary with changes in interest rates at any time during the life of the *regulated lifetime mortgage contract*, Section 9: ‘Will the interest rate change?’ must also contain the following text:

“The [frequency of payments from *MCOB* 9.4.37R] payments shown in this illustration could be considerably



different if interest rates change. For example, for one percentage point increase in [describe the interest rate that applies], your [frequency of payments] payment will increase by around £[insert amount by which payment will increase].”.

- (2) If *MCOB 9.4.53R(6)* applies the following additional text must be included after the text in (1), for each part (or combination of parts), where the amounts by which the *customer’s* payments would increase are different:

“After the [describe the type of interest rate that applies, the part (or parts) to which it applies and date or period for which it applies] then for one percentage point increase in [describe the interest rate that applies], your [insert frequency of payments] payment will increase by around £[insert amount by which payment will increase].”.

- (3) Paragraph (1) does not apply where the difference between the interest rate included in the *illustration* in accordance with *MCOB 9.4.39R* and the maximum interest rate that can be charged on the *regulated lifetime mortgage contract* is less than one percentage point.

9.4.55 R The amount by which the *customer’s* payments would increase in accordance with *MCOB 9.4.54R(1)* must be calculated as follows:

- (1) the firm must use the total amount borrowed, or assume that all payments due on the *regulated lifetime mortgage contract* have actually been paid, all additional fees and payments due have been paid, and no underpayments or overpayments have been made; and
- (2) the interest rate from which the increase is calculated must be the variable interest rate charged on the *regulated lifetime mortgage contract* at the date that the *illustration* is issued (that is, the variable interest rate quoted in Section 5 of the *illustration*); where the variable interest rate changes after a set period or on a set date it must be based on the initial variable interest rate charged on the *regulated lifetime mortgage contract* at the date the *illustration* is issued (for example, if the initial interest rate is discounted, it must be based on the discounted rate).

9.4.56 G Although the effect of a one percentage point increase in interest rates on the *customer’s* payments is not completely linear, the purpose of *MCOB 9.4.54R(1)* and (2) is to show the approximate effect of such an increase.

9.4.57 R Where the *customer* is not required to make payments to the *mortgage lender* on the *regulated lifetime mortgage contract*, and

therefore all or part of the interest is rolled up, the following information must be included under the section heading ‘Will the interest rate change?’:

- (1) if the interest rate is fixed throughout the life of the *regulated lifetime mortgage contract*, an explanation that the estimated debt shown in accordance with *MCOB 9.4.51R(6)* will not vary because the interest rate is fixed;
- (2) if the interest rate is fixed for part of the life of the *regulated lifetime mortgage contract*, an explanation of when or how increases in the interest rate charged on the *regulated lifetime mortgage contract* affect the estimated debt shown in accordance with *MCOB 9.4.51R(6)*;
- (3) if the interest rate cannot go above a certain level or below a certain level, or both, and this applies throughout the life of the *regulated mortgage lifetime contract*, an explanation that this is the case; and
- (4) if the interest rate cannot go above a certain level for part of the life of the *regulated lifetime mortgage contract*, an explanation of when or how increases in the interest rate charged on the *regulated lifetime mortgage contract* affect the estimated debt shown in accordance with *MCOB 9.4.51R(6)*.

**9.4.58**      **R**      Where the *customer* is not required to make payments to the *mortgage lender* on the *regulated lifetime mortgage contract*, and therefore all or part of the interest is rolled up, Section 9: ‘Will the interest rate change?’ must also contain (if applicable):

- (1) if the interest rate is variable, the following text:  
  
“If the interest rate increases, the amount you owe will also increase. If the interest rate was [one percentage point higher than shown *MCOB 9.4.51R(4)(b)*] throughout the example term of [insert number of years – see *MCOB 9.4.10R* or *MCOB 9.4.12R*] years, the amount you would owe us at the end of that time would be: [insert amount].”;  
or
- (2) if the interest rate will become variable at the end of a fixed or capped rate period, the following text:  
  
“If the interest rate increases after the [insert as applicable: fixed rate period or capped rate period] ends, the amount you owe will also increase. If the interest rate was [one percentage point higher than shown in *MCOB 9.4.51R(4)(b)* above] throughout the remainder of the example term of [insert number of years – see *MCOB 9.4.10R* or *MCOB*

9.4.12R] years, the amount you would owe us at the end of that time would be: [insert amount].”; or

- (3) if a capped rate applies throughout the life of the *regulated lifetime mortgage contract* and the interest rate at the date of issue of the *illustration* is lower than the capped rate, the following text:

“If the interest rate increases, the amount you owe will also increase. The interest rate on this lifetime mortgage cannot be higher than [rate at which interest is capped] If the interest rate was [rate at which interest is capped] throughout the example term of [insert number of years – see *MCOB 9.4.10R* and *MCOB 9.4.12R*] years, the amount you would owe us at the end of that time would be: [insert amount].”.

#### Risk Warning

- 9.4.59 R Where *MCOB 9.4.54R(1)* applies, the following words must also be prominently displayed at the end of the sub-section ‘Will the interest rate change?’

“Rates may increase by much more than this so make sure you can afford the [insert frequency of payments from *MCOB 9.4.37R*] payment.”.

- 9.4.60 R Where *MCOB 9.4.58R(1)* or (2) applies, the following words must also be prominently displayed at the end of the sub-section ‘Will the interest rate change?’

“Your debt may increase significantly.”

- 9.4.61 G For guidance on prominence see *MCOB 2.2.9G*.

#### Section 10: ‘How the value of your home could change’

- 9.4.62 R Where the *customer* is required to make payments to the *mortgage lender* on the *regulated lifetime mortgage contract* in respect of the interest payable, and therefore the amount outstanding on the *regulated lifetime mortgage contract* will broadly remain unchanged, Section 10: ‘How the value of your home could change’ must contain the following text:

“The amount you owe will usually stay the same over the life of the mortgage so the amount due to [name of *mortgage lender*] when the mortgage is repaid will be [amount of loan], unless charges have to be added.”.

- 9.4.63 R Where the *customer* is not required to make payments to the *mortgage lender* on the *regulated lifetime mortgage contract*, and therefore all or part of the interest is rolled up, Section 10: ‘How

the value of your home could change' must contain the following text:

“When you look at how the amount you owe goes up, remember also that property prices can go up or down, and this can affect the amount of money left over for you or your estate after the mortgage is repaid to [name of mortgage lender].”.

9.4.64 R Section 10: 'How the value of your home could change' must contain the following text in addition to the text in accordance with *MCOB 9.4.62R* or *MCOB 9.4.63R*:

“Based on the estimated value of your home now of [insert amount from *MCOB 9.4.6R(3)*] this example shows what the value of your home would be after [insert term from *MCOB 9.4.10R*, or *MCOB 9.4.12R*] years if the value went up by 1% each year or went down by 1% each year. Remember also that the mortgage may run for more or less than [insert term from *MCOB 9.4.10R*, or *MCOB 9.4.12R*] years. This is an example only and gives no guide to how much the value of your home will actually change.

If your home went up in value by 1% each year – it would be worth [insert amount] after [insert term from *MCOB 9.4.10R*, or *MCOB 9.4.12R*] years.

If your home went down in value by 1% each year - it would be worth [insert amount] after [insert term from *MCOB 9.4.10R*, or *MCOB 9.4.12R*] years.”.

Section 11 ‘What fees must you pay?’

9.4.65 R Under the section heading ‘What fees must you pay?’ the *illustration* must:

- (1) itemise all the fees that are included in the calculation of the *APR* in accordance with *MCOB 10* (Annual Percentage Rate), excluding charges for any compulsory mortgage payment protection insurance; and
- (2) include a statement at the end of the section using the following text:

“You may have to pay other taxes or costs in addition to any fees shown here.”.

9.4.66 G An example of a fee that would be included in Section 11 would be an administrative charge to redeem the *regulated lifetime mortgage contract*. An example of a fee that would not be included would be a fee payable by the *customer* to insure their property elsewhere (however this would need to be stated in the separate ‘Insurance’ section as required by *MCOB 9.4.72R*). Where fees are payable only on early repayment of the *regulated lifetime mortgage contract*, they

should not be stated here (however these fees would need to be stated in Section 13 of the *illustration* ‘What happens if you do not want this mortgage any more’, as required by *MCOB* 9.4.83R(1)(c)).

**9.4.67 R** The fees included in this section in accordance with *MCOB* 9.4.65R must be itemised under the relevant sub-headings as follows:

- (1) the fees that are payable by the *customer* to the *mortgage lender* must be itemised under the sub-heading ‘Fees payable to [name of *mortgage lender*]’;
- (2) the remaining fees must be itemised under the sub-heading: ‘Other fees’; and
- (3)
  - (a) if there are no fees to be itemised in accordance with (1), the sub-heading must be retained and a statement must be included that no fees apply;
  - (b) if there are no fees to be itemised in accordance with (2), the sub-heading must be retained and only the text in *MCOB* 9.4.65R(2) applies.

**9.4.68 R** The following information must be provided for each fee included in this section of the *illustration* in accordance with *MCOB* 9.4.65R(1):

- (1) a description of the fee;
- (2) the amount payable by the *customer* recorded in a column headed ‘Fee amount’ on the right-hand side of this section;
- (3) for fees included under the sub-heading ‘Other fees’, to whom the fee is payable;
- (4) when the fee is payable;
- (5) whether or not the fee is refundable, and if so, the extent to which it is refundable;
- (6) which fees (if any) are estimated in accordance with *MCOB* 9.4.114R(2) and based on representative information; and
- (7) if any fee is payable after the start of the *regulated lifetime mortgage contract* and subject to change in the future, for example a fee payable on final repayment of the *regulated lifetime mortgage contract*, the amount of that fee, along with a statement that this is the ‘current fee’.

**9.4.69 R** (1) If a *higher lending charge* is payable by the *customer*, the following text must be used to describe such a charge for the purposes of *MCOB* 9.4.68R:

“A higher lending charge is payable because you are borrowing [insert the ratio of the mortgage amount (from *MCOB 9.4.13R*) to the property’s price or value (from *MCOB 9.4.6R(3)*)] of the property’s [estimated] [price/value].”

- (2) If the *customer* has asked for any fees to be added to the loan amount, this should be stated alongside each fee.
- (3) If the *customer* has the option of adding to the loan amount any of the fees included in this section, the following text must be included:

“If you wish you can add [this/these/the {type of fee}] fee(s) to the lifetime mortgage. This will increase the amount you owe to [insert amount of the lifetime mortgage with the fee(s) included] and will increase the amount you owe shown in Section 8. If you want to do this, you should ask for another illustration that shows the effect of this on the amount you owe”.

- (4) Any fees that are estimated based on representative information in accordance with *MCOB 9.4.114R(2)* must include an appropriate explanation of what the fee represents. For example, if this section includes an estimated fee for the legal work that the *customer* might be charged by his conveyancer for carrying out work on behalf of the *mortgage lender*, the *illustration* must explain that the fee is estimated, and that it only covers part of the costs of legal work that the *customer* might need to pay.

9.4.70 G ‘Other fees’ will include any fee charged by a *mortgage intermediary*, or another third party, for *advising on* or *arranging a regulated lifetime mortgage contract*, but not commission or *procurement fees* (which are dealt with in Section 16 of the *illustration*).

9.4.71 R A *mortgage lender* must provide a *tariff of charges* to the *customer*, if the *customer* so requests.

#### Section 12: ‘Insurance’

- 9.4.72 R
- (1) Under the section heading ‘Insurance’ the *illustration* must include details of:
    - (a) insurance which is a *tied product*; and
    - (b) insurance which is required as a condition of the *regulated lifetime mortgage contract* which is not a *tied product*.
  - (2) Under this section heading a *firm* may also provide details of insurance which is optional for the *customer* to take out.

- (3) It must be clear to the *customer* which products he is required to purchase under which circumstances (for example, where both a *tied product* and a *mortgage intermediary* are involved, whether the policy must be purchased from the *mortgage lender* or the *mortgage intermediary*).
- 9.4.73 R Under the sub-heading ‘Insurance you must take out through [insert name of *mortgage lender* or where relevant the name of the *mortgage intermediary*, or both]’ the following information must be included if the *regulated lifetime mortgage contract* requires the *customer* to take out insurance that is a *tied product* either through the *mortgage lender* or where relevant the *mortgage intermediary*:
- (1) details of which insurance is a *tied product*;
  - (2) for how long the *customer* is obliged to purchase the insurance;
  - (3) an accurate quotation or a reasonable estimate of any payments the *customer* needs to make for the insurance;
  - (4) where a quotation is provided for insurance in accordance with (3) on the basis of an estimated sum insured, because the actual required sum insured is unknown, the fact that it is estimated should be stated along with confirmation of the level of cover that has been assumed;
  - (5) details of when the *customer’s* payments for such insurance change, for example, if premiums are reviewed annually; and
  - (6) where a quotation is not provided in accordance with (3), a statement of when and how a quotation will be provided (for example, separately and as soon as possible).
- 9.4.74 G *Firms* are reminded that MCOB 5.4.23R requires a *firm* to provide a *customer* with an accurate quotation for any *tied products*. Where the level of cover the *firm* requires the *customer* to take up is known at the outset, then the quotation should reflect that level of cover.
- 9.4.75 R If the *regulated lifetime mortgage contract* does not require the *customer* to take out insurance as a *tied product*, the sub-heading ‘Insurance you must take out through [insert name of *mortgage lender* and where relevant the name of the *mortgage intermediary*]’ must be retained and a statement must be provided under this heading that the *customer* is not obliged to take out any insurance through the *mortgage lender* or, where relevant, the *mortgage intermediary*.

- 9.4.76 R The following information must be included under the sub-heading ‘Insurance you must take out as a condition of this mortgage but that you do not have to take out through [insert name of *mortgage lender* or where relevant the name of the *mortgage intermediary*, or both]’:
- (1) if the *regulated lifetime mortgage contract* requires the *customer* to take out an insurance policy (other than that which is a *tied product* which the *customer* is obliged to purchase through the *mortgage lender* or where relevant the *mortgage intermediary*), a brief statement of the type of insurance the *firm* requires; a quotation for such insurance may be included in the *illustration*, estimated where necessary;
  - (2) if the *mortgage lender* or the *mortgage intermediary* makes a charge in cases where the *customer* does not arrange insurance that is a condition of the mortgage through the *mortgage lender* or the *mortgage intermediary*, this must be stated, together with the amount of the charge and the frequency with which this charge is payable; and
  - (3) if no insurance policies are required (other than that which is a *tied product*), the sub-heading ‘Insurance you must take out as a condition of this mortgage that you do not have to take out through [insert name of *mortgage lender* and, where relevant the *mortgage intermediary*]’ must be retained in the *illustration* and a statement must be provided under this heading that no such insurance is required.
- 9.4.77 G Under the sub-heading ‘Insurance you must take out as a condition of this mortgage that you do not have to take out through [insert name of *mortgage lender* or where relevant the name of the *mortgage intermediary*, or both]’, the *illustration* should not include any insurance policy that may be taken out by a *mortgage lender* itself to protect its own interests rather than the *customer’s* interests, for example, because of the ratio of the loan amount to the property value.
- 9.4.78 G If the cost of any insurance that the *mortgage lender* might take out to protect its own interests because of the ratio of the loan to the property value is passed on to the *customer*, it will be shown elsewhere in the *illustration*, for example as a *higher lending charge* or in the interest rate charged.
- 9.4.79 R A *firm* may include in the *illustration*, under the sub-heading ‘Optional insurance’, quotations (estimated where necessary) for any insurance products (other than the insurance products covered elsewhere in the *illustration* in accordance with *MCOB 9.4.72R* and *9.4.76R*) that the *firm* issuing the *illustration* wishes to sell to the *customer*.



- 9.4.80 R If no quotations are included in the *illustration* in accordance with *MCOB 9.4.79R*, the sub-heading ‘Optional insurance’ must not be included in the *illustration*.
- 9.4.81 R (1) If any quotations for insurance are included in the *illustration* in accordance with *MCOB 9.4.73R(3)*, *MCOB 9.4.76R(1)* or *MCOB 9.4.79R*, the *illustration*:
- (a) must include a brief description only of the type of insurance (full details of the insurance cover may however be provided separately); and
  - (b)
    - (i) must include the total price to be paid by the *customer* in a column on the right hand side of the *illustration* under the heading ‘[insert frequency of payments quoted] payments’; and
    - (ii) may refer the *customer* to the individual insurance product disclosure documentation.
- (2) If the *customer* has asked to add any insurance premiums to the amount borrowed in accordance with *MCOB 9.4.21R(4)*:
- (a) the insurance premium(s) must be included in Section 4; and
  - (b) the following text must be used in Section 12:
 

**“The annual insurance premium will be added to your lifetime mortgage account and increase the amount you owe. You can pay this premium in full by [insert details of the period of time that the customer will have to pay the premium in full before interest is charged on the insurance premium e.g. “by the end of the month in which the lifetime mortgage starts”] at no extra cost, otherwise interest will be charged at [insert details of the applicable interest rate e.g. ‘the same rate as your lifetime mortgage’ or ‘the standard variable rate which is currently x%’].”**
- 9.4.82 G The terms on which an insurance premium has been calculated should be presented to the *customer* in the format determined by the relevant regulatory requirements.
- Section 13: ‘What happens if you do not want this mortgage any more?’**

**R** Under the heading ‘What happens if you do not want this mortgage any more?’, the *illustration* must include the following information on the *regulated lifetime mortgage contract*:

- (1) under the sub-heading ‘Early repayment charges’:
  - (a) an explanation of whether *early repayment charges* are payable;
  - (b) an explanation of when *early repayment charges* are payable;
  - (c) an explanation of any other fees that are payable if the *regulated lifetime mortgage contract* is repaid early, and the current level of these fees;
  - (d) a basic explanation of the basis on which *early repayment charges* are calculated (for example, as a percentage of the loan or as so many months’ interest), including, where appropriate, details of any *cashback* or other incentives that must be repaid. The *illustration* may refer to a separate document for full details of all terms and conditions relating to the charges that apply if the *regulated lifetime mortgage contract* is repaid early;
  - (e) example cash amounts of any *early repayment charges* indicating the range of charges that apply over the period during which such charges apply calculated in accordance with *MCOB 9.4.88R*, which must be described in the *illustration* as ‘cash examples’;
  - (f) the maximum *early repayment charge* that the *customer* could be charged in accordance with *MCOB 12.3* (Early repayment charges), which must be shown as a cash amount and described in the *illustration* as “the maximum charge you could pay” [add if applicable, ‘plus (a) fee(s) which (is/are) currently £x’]; and
  - (g) details of whether or not the *regulated lifetime mortgage contract* is portable on moving house and a brief explanation of any conditions or restrictions that apply including whether there are any restrictions on changing the terms of the *regulated lifetime mortgage contract* during the period in which any *early repayment charges* apply (a reference to another document may be made in order to provide the *customer* with further details of the conditions or restrictions);

- (2) under the sub-heading ‘Circumstances in which early repayment charges do not apply’, a clear statement of the circumstances in which no *early repayment charges* will be payable by the *customer*. (This may include moving to another property, or into sheltered accommodation or residential care.) Where the *regulated lifetime mortgage contract* is portable on moving house but no *early repayment charges* are payable by the customer, the remaining information required by *MCOB 9.4.83R(1)(g)* should be included here.
- 9.4.84 G The requirements in *MCOB 9.4.83R(1)* may be presented in a tabular format.
- 9.4.85 G Where a *firm* does not impose an *early repayment charge*, it may delete the sub heading ‘Circumstances in which early repayment charges do not apply’.
- 9.4.86 R Where *MCOB 9.4.83(1)(e)* would result in more than three cash amounts being shown in the *illustration*, the cash amounts shown in the *illustration* may be restricted to three examples. These three examples are in addition to the maximum *early repayment charge* required by *MCOB 9.4.83R(1)(f)*. These examples must be representative of the full range of charges that apply and not be limited to the lowest charges that apply. These three examples are in addition to:
- (1) any statement of the amount of any fees described in *MCOB 9.4.83R(1)(c)*; and
- (2) the maximum *early repayment charge* required by *MCOB 9.4.83R(1)(f)*.
- 9.4.87 G An example which would comply with *MCOB 9.4.86R* would be if a five year fixed rate mortgage had a charge which reduced linearly by 1% each year from 5% in the first year to 1% in the final year and cash examples were used based on 5% in year 1, 3% in year 3 and 1% in year 5.
- 9.4.88 R (1) In calculating example cash amounts in accordance with *MCOB 9.4.83R(1)(e)*, it must be assumed that:
- (a) the *regulated lifetime mortgage contract* is repaid in full;
- (b) all payments due (if applicable) on the *regulated lifetime mortgage contract* are actually paid;
- (c) additional fees and charges such as insurance premiums have been paid; and

(d) no underpayments or overpayments (if applicable) have been made.

(2) If:

(a) *cashbacks* or other incentives need to be repaid; or

(b) fees need to be paid;

the amounts that would need to be repaid or paid must be included in the example cash amounts.

(3) Where the calculation of the *early repayment charge* is based on the interest rate charged on the *regulated lifetime mortgage contract*, or on interest rates generally, the interest rate(s) used for the calculation of the example cash amounts must be those in force at the date that the *illustration* is issued to the *customer*.

(4) The example cash amounts must reflect the maximum charge in a particular year. Where it is possible to state exact *early repayment charges* (that is, where all such charges are based on the original amount borrowed), the *illustration* must do so.

9.4.89 R Where the cash examples from MCOB 9.4.88R included in the *illustration* would vary either if the interest rate charged on the *regulated lifetime mortgage contract* changed or with changes in interest rates generally, an appropriate warning that the *early repayment charges* may vary from the cash examples must be included in the *illustration*.

9.4.90 R Where the *early repayment charge* could be higher than those stated in the *illustration* if the *regulated lifetime mortgage contract* continued after the end of the term estimated in accordance with MCOB 9.4.10R or MCOB 9.4.12R, Section 13 of the *illustration* must include a clear statement to that effect.

#### Section 14 'Additional features'

9.4.91 R Under the section heading 'Additional features' the *illustration* must include, where relevant, details of how the *mortgage lender* would treat any payments by the *customer* in excess of those required, and details of any additional features or facilities under the various sub-headings in MCOB 9.4.93R.

9.4.92 R (1) If none of the features at MCOB 9.4.93R are applicable to the *regulated lifetime mortgage contract* to which the *illustration* relates, the section headed 'Additional features' must be retained, but the sub-headings must not be included and a statement must be added to explain that there are no additional features.

- (2) Only those features available on the *regulated lifetime mortgage contract* need be included in the *illustration*.
- 9.4.93 R The relevant sub-headings are as follows:
- (1) 'Overpayments'
  - (2) 'Underpayments'
  - (3) 'Payment holidays';
  - (4) 'Borrow back';
  - (5) 'Additional borrowing available without further approval';
  - (6) 'Additional secured borrowing';
  - (7) 'Credit card';
  - (8) 'Unsecured borrowing';
  - (9) 'Linked current account'; and
  - (10) 'Linked savings account'.
- 9.4.94 R
- (1) Under the sub-heading 'Overpayments', the *illustration* must include details of any restrictions on lump sum and regular overpayments (if payments are required) on the *regulated lifetime mortgage contract*, together with a statement as to whether or not the amount on which the interest is recalculated is reduced immediately on receipt of any lump sum or regular overpayment.
  - (2) Where such recalculation does not take place immediately (for example, if an annual rest method is used), this statement must be accompanied by an explanation of when the amount on which the interest is recalculated is reduced following a lump sum or regular overpayment.
  - (3) Where *early repayment charges* apply, this section must not repeat the details provided in Section 13 of the *illustration*, but may refer to Section 13.
- 9.4.95 G Where the interest recalculation described in *MCOB 9.4.94R* takes place immediately, *firms* may add a statement in this section explaining that the *customer* will get the benefit of the overpayment immediately.
- 9.4.96 R Under the sub-heading 'Underpayments', the *illustration* must include details of whether the *customer* can make underpayments and a brief statement of any conditions that apply.

- 9.4.97 R Under the sub-heading ‘Payment holidays’, the *illustration* must include details of circumstances in which the *customer* can take *payment holidays* and a brief statement of any conditions that apply.
- 9.4.98 R Under the sub-heading ‘Borrow back’, the *illustration* must include details of circumstances in which the *customer* can *borrow back* any monies overpaid and a brief statement of any conditions that apply.
- 9.4.99 R Under the sub-heading ‘Additional borrowing available without further approval’, the *illustration* must provide details of circumstances in which additional *secured lending* is offered with the *regulated lifetime mortgage contract* that would allow the *customer*, subject to certain conditions, to increase the amount of the loan on which the *illustration* is based.
- 9.4.100 R Under the sub-heading ‘Additional secured borrowing’, the *illustration* must provide details of circumstances in which additional *secured lending* is offered with the *regulated lifetime mortgage contract* that would allow the *customer*, subject to certain conditions, to increase the amount of the loan on which the *illustration* is based.
- 9.4.101 R Under the sub-heading ‘Unsecured borrowing’, the *illustration* must provide details of circumstances in which *unsecured lending* is offered with the *regulated lifetime mortgage contract* that would allow the *customer* to increase the amount of the loan on which the *illustration* is based.
- 9.4.102 R Under the sub-heading ‘Credit card’, the *illustration* must:
- (1) state whether a credit card is offered with the *regulated lifetime mortgage contract*; and
  - (2) if a credit card is offered and it is a *mortgage credit card*:
    - (a) unless (b) applies, include the following text:
 

“This card will not give you a number of the statutory rights associated with traditional credit cards. Your lifetime mortgage offer will tell you more about the differences.”; or
    - (b) where the *mortgage lender* provides the *customer* with contractual rights in relation to a *mortgage credit card* equal to or greater than those provided under the Consumer Credit Act 1974, include the following text:
 

“This card will not give you a number of the statutory rights associated with traditional credit

cards. However, [insert name of *mortgage lender*] will ensure that you will be treated no differently from the user of a traditional credit card. Your lifetime mortgage offer will tell you more about this.”

- 9.4.103 R Where any of the additional features under *MCOB 9.4.99R* to *MCOB 9.4.102R* inclusive apply the following must also be stated if the amount of additional borrowing that would be available to the *customer* is stated in the *illustration*:
- (1) the maximum additional amount available;
  - (2) if the interest rate payable on any additional borrowing is different to the interest rate in Section 5 and Section 8 of the *illustration*, the interest rate and the *APR* charged on the additional borrowing. The *APR* must be calculated in accordance with *MCOB 10* (Annual Percentage Rate), based on the maximum amount of additional borrowing that would be permitted for the *customer* and the term of the loan from *MCOB 9.4.10R* or *MCOB 9.4.12R*;
  - (3) the total resulting debt the *customer* could incur (including the original loan amount);
  - (4) the payments on this total debt based on the frequency of payments in *MCOB 9.4.37R* (if payments are required) and the interest rate(s) that would apply on the date the *illustration* is issued;
  - (5) whether this additional borrowing must be repaid in full if the original loan is repaid in full, along with details of any conditions that apply;
  - (6) if *early repayment charges* apply to the additional amount borrowed:
    - (a) that *early repayment charges* are payable;
    - (b) an explanation of when *early repayment charges* are payable; and
    - (c) the maximum *early repayment charge* that the customer could be charged in accordance with *MCOB 12.3* which must be shown as a cash amount; and
  - (7) if it is the case, that the maximum amount of borrowing available, or the terms and conditions, may change depending on other factors such as ratio of the loan amount to the property value.

- 9.4.104 R Where more than one additional borrowing facility from *MCOB 9.4.99R* to *MCOB 9.4.102R* applies, *MCOB 9.4.103R(3)* and (4) must each be based on the total of all these *linked borrowing* facilities and included under a separate sub-section titled ‘Total additional borrowing’.
- 9.4.105 G The purpose of *MCOB 9.4.104R* is to show the total amount of any additional borrowing facilities that would be available to the *customer* and the cost of utilising these facilities. It must combine the amount available under any *linked borrowing* facilities including additional *secured lending*, credit cards and *unsecured lending*.
- 9.4.106 R (1) Where additional features are included in accordance with *MCOB 9.4.91R* and these are credit facilities that do not meet the definition of a *regulated mortgage contract*, the relevant parts of Section 14 of the *illustration* must include the following text:
- “This additional feature is not regulated by the Financial Services Authority”.
- (2) Where additional features are included in accordance with *MCOB 9.4.91R* and these are credit facilities regulated by the Consumer Credit Act 1974, the relevant parts of Section 14 of the *illustration* must include the following text after the text in (1):
- "but is regulated under the Consumer Credit Act 1974. You will receive a separate credit agreement with any offer document for this additional feature, describing the detailed terms on which this feature is available."
- 9.4.107 R Where all or part of the maximum amount of additional borrowing is secured on the *customer’s* home, a prominent warning must be included that additional borrowing increases the amount of credit secured on the *customer’s* home.
- 9.4.108 G Suitable wording for the warning contained in *MCOB 9.4.107R* would be:
- “This will increase the amount of borrowing secured on your home.”.
- 9.4.109 R Under the sub-heading ‘Linked current account’ the illustration must include the following information:
- (1) whether a linked current account is a compulsory or optional product (if the current account is a compulsory product this must also be stated in Section 5 of the *illustration* in accordance with *MCOB 9.4.24R(7)*);
- (2) an explanation of the interest rates that apply under different circumstances to the linked current account, if



different from the interest rate charged on the *regulated lifetime mortgage contract* (for example, if a different interest rate applies if the account is overdrawn); and

- (3) the *firm* providing the linked current account if it is not the *mortgage lender*.

9.4.110 R Under the sub-heading ‘Linked savings account’ the illustration must include the following information:

- (1) whether a linked savings account is a compulsory or optional product (if the savings account is a compulsory product this must also be stated in Section 5 of the *illustration* in accordance with *MCOB 9.4.24R(7)*);
- (2) the interest rate paid on the linked savings account if it differs from the interest rate charged on the *regulated lifetime mortgage contract*; and
- (3) the *firm* providing the linked savings account if it is not the *mortgage lender*.

#### Section 15 ‘Overall cost of this mortgage’

9.4.111 R Under the section heading ‘Overall cost of this mortgage’:

- (1) the following text must be included in the illustration:

“The APR helps you to compare lifetime mortgages by giving you one rate that shows the overall cost of the mortgage. It takes into account some fees and charges as well as the interest due, and this means that the APR may be higher than the interest rate shown in Sections 5 and 8. Only use the APR to compare lifetime mortgages of the same type, and where the same example term is used.”;

- (2) where the *customer* is required to make payments on the *regulated lifetime mortgage contract* the following text must also be included in the *illustration*:

“The overall cost takes into account the payments in Sections 8 and 11 above.”; and

- (3) reference must be made to any other payments that have been included in the *APR* but not included in Sections 8 and 11 of the *illustration* if these are relevant to the *regulated lifetime mortgage contract* that is the subject of the *illustration*.

9.4.112 G *MCOB 9.4.111R(3)* would require, for example, a reference to the fact that the overall cost takes into account mortgage payment protection insurance where this is required as a condition of the *regulated lifetime*

*mortgage contract* to which the *illustration* relates. The requirement to take out such insurance must be stated in Sections 5 and 12 of the *illustration* in accordance with *MCOB 9.4.24R(7)*, *MCOB 9.4.72R* or *MCOB 9.4.76R*.

- 9.4.113 R The following text must be included after the text required by *MCOB 9.4.111R* with the relevant cost measures shown in the right-hand column of Section 15 in accordance with the layout shown in *MCOB 9 Annex 1R*:
- (1) “The total amount you would pay back over the example term of [insert number of years in accordance with *MCOB 9.4.10R* or *MCOB 9.4.12R*] including the amount borrowed is £[insert *total amount payable*].”; and
  - (2) “The overall cost for comparison is [insert the *APR*] % *APR*.”.
- 9.4.114 R (1) The *APR* and the *total amount payable* in *MCOB 9.4.113R* must be calculated on the basis of information obtained from the *customer* in accordance with *MCOB 9.4.6R*.
- (2) Where there is a charge to be included in the *APR* and *total amount payable* and the precise amount of that charge is not known at the time that the *illustration* is provided, *MCOB 10.3* (Formula for calculating the *APR*) sets out a number of relevant assumptions to be used. If the method for including the charge is not addressed in *MCOB 10* (Annual Percentage Rate), the charge must be estimated based on information which is known to be representative of the *regulated lifetime mortgage contract* to which the *illustration* relates.
  - (3) Where the *regulated lifetime mortgage contract* is a *roll-up of interest mortgage*, the *total amount payable* must be based on the total amount that the *customer* would owe at the end of the example term.
- 9.4.115 G In relation to *MCOB 9.4.114R(2)*, the cost of conveyancing would be an example of a charge for which representative information may need to be used in the calculation of the *APR* and the *total amount payable*.
- 9.4.116 R At the end of Section 15 the following text must be included, if relevant:
- “The figures in this section will vary following interest rate changes.”.
- 9.4.117 G The prescribed text at *MCOB 9.4.116R* would not be relevant if the *illustration* is for a *regulated lifetime mortgage contract* that has a fixed interest rate throughout the life of the mortgage.

9.4.118 G The purpose of the *illustration* is to provide the *customer* with details of the cost of borrowing the amount required over the example term from *MCOB 9.4.6R* and *MCOB 9.4.10R* (or 9.4.12R). Section 14 has been designed specifically to allow examples of the effect of any additional features of the *regulated lifetime mortgage contract* such as a linked current account. Examples of these features should therefore be shown in Section 14 and not in Section 15 or Section 8 of the *illustration*.

#### Section 16 ‘Using a mortgage intermediary’

9.4.119 R Where the *illustration* is issued to a *customer* by, or on behalf of, a *mortgage intermediary*, Section 16 ‘Using a mortgage intermediary’ must be included in the *illustration* and must include the following:

- (1) unless *MCOB 9.4.120R* applies, a clear statement of the amount payable (either directly or indirectly) by the *mortgage lender* to the *mortgage intermediary*, or to any third parties; and
- (2) the name of the *mortgage lender* who will make the payment, the name of the *mortgage intermediary* and the names of any third parties who will be paid.

9.4.120 R If the amount payable by the *mortgage lender* to the *mortgage intermediary* and to third parties is £250 or less, the *mortgage intermediary* need only state that the amount of the payment is ‘no more than £250’, unless the *customer* requests the actual amount.

9.4.121 R If the *mortgage intermediary* will pass to the *customer* all or part of the amount payable to the *mortgage intermediary* under *MCOB 9.4.119R(1)* or *MCOB 9.4.120R*, that fact may be stated in this section, along with the amount payable to the *customer*.

9.4.122 R If the *mortgage lender* will make no payment to the *mortgage intermediary* or any third party, this section may state that the *mortgage intermediary* will receive no payment.

9.4.123 R The amount payable in *MCOB 9.4.119R(1)* or *MCOB 9.4.120R* must include:

- (1) any *procuration fee*; and
- (2) a cash value for any material non-cash inducements that the *mortgage lender* provides to a *mortgage intermediary* or third party, whether payable directly or indirectly.

9.4.124 G *MCOB 2.3.7R* requires any material inducements provided to a *mortgage intermediary* or third party connected to the *mortgage intermediary*, by a *mortgage lender*, whether directly or indirectly, to be quantified in cash terms, which will enable the cash values to be included in the *illustration* in accordance with *MCOB 9.4.123R*.

9.4.125 G An example of a statement which would comply with *MCOB* 9.4.119R and *MCOB* 9.4.123R would be:

“[name of *mortgage lender*] will pay [name of *mortgage intermediary*] an amount of £350 in cash and benefits if you take out this lifetime mortgage.”.

#### Contact details

9.4.126 R This section must:

- (1) follow Section 15 ‘Overall cost of this mortgage’, unless the *illustration* is issued by a *mortgage intermediary*, in which case it must follow Section 16 ‘Using a mortgage intermediary’; and
- (2) include the name, address and contact point of the *firm* providing the illustration.

9.4.127 G An example of wording which would comply with *MCOB* 9.4.126R(2) would be:

“If you wish to discuss this lifetime mortgage illustration please contact [name of individual] at [address] or on [telephone number].”.

#### Foreign currency mortgages

9.4.128 R If the *customer’s* liability under a *regulated lifetime mortgage contract* is in a currency other than sterling, *MCOB* 9.4 applies to the *illustration* for that *regulated lifetime mortgage contract* with the following modifications:

- (1) all cash amounts must be given in the relevant currency except where otherwise required by (2)(a) and (3);
- (2) the following information must be stated under Section 5 ‘Description of this mortgage’:
  - (a) the amount in sterling on which the *illustration* is based from *MCOB* 9.4.13R based on the exchange rate in (2)(b);
  - (b) the exchange rate used; and
  - (c) when the exchange rate quoted applied;
- (3) the following text must be added at the end of Section 5 ‘Description of this mortgage’:

“This illustration is based on the sterling equivalent of [insert details from (2)(a)] based on [insert details from (2)(b)] as at [insert details from (2)(c)]. Exchange rates can

vary significantly. The effect of a 5% decrease in the value of sterling to the [insert name of relevant currency] would increase your total borrowing to [insert amount to which the amount borrowed from *MCOB 9.4.13R* would increase in sterling]. [Insert if payments are required: This would increase your [insert frequency of payments from *MCOB 9.4.37R*] payments by the sterling equivalent of £[insert amount in sterling]].”.

The following information must be added to this text:

- (a) the cash amount to which the amount borrowed would increase in sterling if there was a decline of 5% in the value of sterling when compared to the relevant currency; and
- (b) if payments are required, the amount by which (2)(b) would increase the *customer's* payments based on the frequency of payments from *MCOB 9.4.37R*, shown as a sterling equivalent cash amount.

#### Risk warning

- 9.4.129 R The text at *MCOB 9.4.33R(8)* must be immediately followed by the following additional text, prominently displayed (for guidance on prominence see *MCOB 2.2.9G*):

“Changes in the exchange rate may increase the sterling equivalent of your debt.”.

#### Shared appreciation mortgages

- 9.4.130 R If the *regulated lifetime mortgage contract* is a *shared appreciation mortgage*, *MCOB 9.4* applies to the *illustration* with the following modifications:

- (1) Section 5 ‘Description of this mortgage’ must contain the following additional information and text in this order after the details required by *MCOB 9.4.24R* to *MCOB 9.4.29R*:
  - (a) “This lifetime mortgage involves [name of *mortgage lender*] taking a percentage share in any increase in the value of your property [insert details of all occasions when the share will be payable to the *mortgage lender*, for example, ‘after x years, or when this lifetime mortgage comes to an end or is terminated early’]. The amount [name of *mortgage lender*] will take depends on any increase in the value of your property.” [Include if relevant: “If your property falls in value between now and the end of this lifetime mortgage you will be required to pay

[add details of what the *customer* will need to pay the *mortgage lender* if the property falls in value].”;

- (b) (i) a basic explanation of how the amount of the share payable to the *mortgage lender* is calculated including the proportions of any given increase in the value of the property and whether this is dependent on the level of growth (for example, that the share payable to the *mortgage lender* is all of the increase in value of the property for the first 5% increase in value, plus half of the additional increase in the value of the property above this);
- (ii) a reference to a separate document for full details of the terms and conditions relating to the amount of the share payable followed by:

“The example below shows how this works.

**EXAMPLE:** Based on the current [estimated] value of your home of [insert details from *MCOB 9.4.6R(3)*], the example(s) below show(s) what the value of your home would be and what share of that value [name of *mortgage lender*] would take after [insert example term of the loan in accordance with *MCOB 9.4.10R* or *MCOB 9.4.12R* or the term after which the equity share becomes payable if less] if the value of your home increased. [Include if relevant: “and what would happen if your home decreased in value.”] “Please note that you should add this payment to the amount of any *early repayment charges* that may be payable – see Section 13”;

- (c) except where (g) applies, example cash amounts for the value of the property and the corresponding amount of the equity share payable, assuming an average annual increase in the value of the property secured by the *regulated lifetime mortgage contract* of 1%, 5% and 10% over the example term from (i) below;
- (d) if the *customer* would be required to pay the *mortgage lender* an amount because the value of the property on which the *regulated lifetime mortgage contract* would be secured had decreased from its value at the start of the term of the *regulated lifetime mortgage contract*, include example cash amounts for the value of the property and the corresponding

amount payable assuming an average annual decrease, in the value of the property secured by the *regulated lifetime mortgage contract* of 1%, 5% and 10% over the term from (i) below;

- (e) if the amount of the equity share payable cannot go above or below a certain level, an explanation that this is the case along with a cash example described as ‘the maximum amount you could pay’;
- (f) include this text after the cash examples in (c):  
  
“This is not an indication of how the actual value of your home may change.”;
- (g) where (c) or (d) apply and the maximum percentage equity share payable is less than the example percentages in (c) or (d), only cash examples for those percentages required by (c) or (d) which are below this maximum need be quoted, along with the maximum in accordance with (e);
- (h) if there are no restrictions on the amount of the equity share payable, the following text should follow the text in (f):  
  
“The amount you will need to pay could be much higher than this.”; and
- (i) for the purposes of the examples required by (c) or (d), the example term used must be stated and must be the estimated term of the *regulated lifetime mortgage contract* in accordance with *MCOB 9.4.10R* or *MCOB 9.4.12R* or the term after which the equity share becomes payable, if less;

- (2) Section 10: ‘How the value of your home could change’ of the *illustration* must contain the following text at the end of the section:

“You also need to think about the cost of paying any share in the value of your home to [insert name of *mortgage lender*] - see Section 5.”

- (3) Section 13 ‘What happens if you do not want this mortgage any more?’ must contain the following text at the end of the first sub-heading ‘Early repayment charges’:

“Remember to add the cost of paying any share in the value of your home to [insert name of *mortgage lender*] – see Section 5.”

(4) Section 15 ‘Overall cost of this mortgage’ of the *illustration* must contain the following text at the end of the section:

“The APR and the total amount you must pay do not take account of the share that [insert name of *mortgage lender*] takes in any increase in the value of your home as described in Section 3. So you should not use these measures to compare this lifetime mortgage with other lifetime mortgages that do not involve [insert name of *mortgage lender*] taking a share in any increase in the value of your home.”.

9.4.131 G The requirements in *MCOB* 9.4.130R(1)(c) and (d) may be presented in a tabular format.

**Risk warning**

9.4.132 R The requirements at *MCOB* 9.4.130R(1) must be immediately followed by the following additional text, prominently displayed (see *MCOB* 2.2.9G):

“You will need to pay this share in the value of your home to [name of mortgage lender] [insert time at which share must be paid - for example 'when your lifetime mortgage is repaid']. Think carefully about how this will affect the amount left over for you or your estate.”.

**9.5 Disclosure at the offer stage for lifetime mortgages**

- 9.5.1 R
- (1) *MCOB* 6.1 to 6.6 (with the modifications stated in *MCOB* 9.5.2R to *MCOB* 9.5.4R) apply to a *mortgage lender* where the *regulated mortgage contract* is a *regulated lifetime mortgage contract*.
  - (2) The table in *MCOB* 9.5.2R shows how the relevant *rules* and *guidance* in *MCOB* 6 must be modified by replacing the cross-references with the relevant cross-references to *rules* and *guidance* in *MCOB* 9.4, and *MCOB* 9.5.
  - (3) The table in *MCOB* 9.5.3R replaces certain *rules* and *guidance* in *MCOB* 6 with *rules* and *guidance* from *MCOB* 9.5.

9.5.2 R Table of modified cross-references to other rules:

This table belongs to *MCOB* 9.5.1R.

Subject	Rule or guidance	Reference in rule or guidance	To be read as a reference to:
Application: What?	<i>MCOB</i> 6.1.5R	<i>MCOB</i> 6	<i>MCOB</i> 6 as modified by <i>MCOB</i> 9.5



<b>Content of offer document</b>	<b>MCOB 6.1.6G</b>	<b>MCOB 5.6</b>	<b>MCOB 9.4</b>
<b>Purpose</b>	<b>MCOB 6.2.1G</b>	<b>MCOB 6</b>	<b>MCOB 6 as modified by MCOB 9.5</b>
<b>General</b>	<b>MCOB 6.3.2R</b>		
<b>Records</b>	<b>MCOB 6.4.3R</b>		
<b>Modifications to the illustration</b>	<b>MCOB 6.4.5G</b>	<b>MCOB 6.4.4R(5)(b)</b>	<b>MCOB 9.5.4R(6)(b)</b>
<b>Modifications to the illustration</b>	<b>MCOB 6.4.6R</b>	<b>MCOB 6.4.4(1)</b>	<b>MCOB 9.5.4R(1)</b>
<b>Modifications to the illustration</b>	<b>MCOB 6.4.6R(1) and (2)</b>	<b>MCOB 5.6</b>	<b>MCOB 9.4</b>
<b>Modifications to the illustration</b>	<b>MCOB 6.4.7R</b>	<b>MCOB 6.4.4R(1)</b>	<b>MCOB 9.5.4R(1)</b>
<b>Modifications to the illustration</b>	<b>MCOB 6.4.7R(2)</b>	<b>MCOB 5</b>	<b>MCOB 9</b>
<b>Modifications to the illustration</b>	<b>MCOB 6.4.7R(3)</b>	<b>MCOB 5.6.73R to MCOB 5.6.83G</b>	<b>MCOB 9.4.72R to MCOB 9.4.82G</b>
<b>Modifications to the illustration</b>	<b>MCOB 6.4.7R(3)</b>	<b>MCOB 5.6.92R to MCOB 5.6.112G</b>	<b>MCOB 9.4.91R to MCOB 9.4.110R</b>
<b>Other information contained in the offer document</b>	<b>MCOB 6.4.13R</b>	<b>MCOB 5.6.122R</b>	<b>MCOB 9.4.126R</b>
<b>Offer documents in place of illustrations</b>	<b>MCOB 6.6.1R</b>	<b>MCOB 5.4 and MCOB 5.5</b>	<b>MCOB 5.4 and MCOB 5.5 as modified by MCOB 9</b>

9.5.3

**R Table of rules in MCOB 6 replaced by rules in MCOB 9:**

This table belongs to *MCOB 9.5.1R*

Subject	Rule	Rule replaced by
Modifications to the <i>illustration</i>	<i>MCOB 6.4.4R</i>	<i>MCOB 9.5.4R</i>

9.5.4

- R** The *illustration* provided as part of the *offer document* in accordance with *MCOB 6.4.1R(1)* must meet the requirements of *MCOB 9.4*, with the following modifications:
- (1) the *illustration* must be suitably adapted and revised to reflect the fact that the *firm* is making an offer to a *customer* and updated to reflect changes to, for example, the interest rate, charges, the exchange rate or the APR required by *MCOB 10* (Annual Percentage Rate) at the date the *illustration* is issued;
  - (2) the *illustration* must be based on the example term estimated in accordance with *MCOB 9.4.10R*;
  - (3) *MCOB 9.4.2R(2)(a)* does not apply;
  - (4) *MCOB 9.4.17R* (Information to be included at the head of the illustration) does not apply;
  - (5) *MCOB 9.4.18R* (Section 1: ‘About this information’) is replaced by the following: “Section 1: ‘About this offer document’.

Under the section heading ‘About this offer document’, the following text must be included:

- (a) “You are not bound by the terms of this offer document until [insert relevant circumstances, including the names of any documents that must be signed. For example “you have signed the legal charge and the funds are released for your lifetime mortgage”].

We are required by the Financial Services Authority (FSA) – the independent watchdog that regulates financial services – to provide you with this offer document.””

- (b) (unless *MCOB 6.6.1* applies)

“You should compare this offer document with the key facts illustration given to you before you applied for this lifetime mortgage, to see how the details may have changed.”;

- (6) Unless (b) applies, *MCOB 9.4.19R* (Section 2: ‘Which service are we providing you with?’) is replaced with the following:

“Section 2: ‘Which service did we provide you with?’

- (a) Under the section heading ‘Which service did we provide you with?’ the following text should be presented as two options each with a ‘check box’, one of which must be marked prominently to indicate the level of service provided to the *customer*:

“We have recommended, having assessed your needs, that you take out this lifetime mortgage.

We have not recommended a particular lifetime mortgage for you. You must make your own choice whether to accept this lifetime mortgage offer.”;

- (b) If the service described in *MCOB 9.4.19R* (Section 2: ‘Which service are we providing you with?’) was provided by another *firm*, *MCOB 9.4.19R* is replaced by the following:

“Section 2: ‘Which service were you provided with?’

Under the section heading ‘Which service were you provided with?’ the following text should be presented as two options each with a ‘check box’ one of which must be marked prominently to indicate the level of service provided to the *customer*:

“[name of firm] recommended that you take out this lifetime mortgage.

[name of firm] did not recommend a particular lifetime mortgage for you. You must make your own choice whether to accept this mortgage offer.”;

- (7) the fees recorded in the *illustration* that is part of the *offer document* in accordance with *MCOB 9.4.65R(1)* must include any fees that have been paid by the *customer*;

- (8) *MCOB 9.4.68R(5)* is replaced by the following:

“(where the fee is payable or has been paid to the *mortgage lender*), whether or not the fee is refundable, and if so, the extent to which it is refundable”;

- (9) details of insurance which the *customer* has chosen to take out through the *firm*, whether or not this insurance was included in the *illustration* provided in accordance with *MCOB 9*, must be included in Section 12 of the *illustration* that is part of the *offer document*;

- (10) where additional features are included in accordance with *MCOB 9.4.91R* and these are credit facilities regulated by the Consumer Credit Act 1974, the relevant parts of Section 14 of the *illustration* that is part of the *offer document* must include the following text:

"This credit facility is regulated under the Consumer Credit Act 1974. Please refer to the separate credit agreement which describes the facility and the terms on which the credit is available.";

- (11) The text required by *MCOB 9.4.102R(2)(a)* or (b) should be adapted to include, or tell the *customer* where they can find, the information required by *MCOB 6.5.4R*; and
- (12) *MCOB 9.4.119R* and *MCOB 9.4.120R* apply to the *illustration* that is part of the *offer document* if the *illustration* given out in accordance with *MCOB 9* was issued by, or on behalf of, a *mortgage intermediary*.

**9.6 Disclosure at the start of the contract and after sale for lifetime mortgages**

- 9.6.1 R** (1) *MCOB 7.1 to 7.3, MCOB 7.5 and MCOB 7.6* (with the modifications stated in *MCOB 9.6.2R to MCOB 9.6.4R*) apply to a *firm* where the *regulated mortgage contract* is a *regulated lifetime mortgage contract*.
- (2) The table in *MCOB 9.6.2R* shows how the relevant *rules* and *guidance* in *MCOB 7* must be modified by replacing the cross-references with the relevant cross-references to *rules* and *guidance* in *MCOB 9.4 to MCOB 9.8*.
- (3) The table in *MCOB 9.6.3R* replaces certain *rules* and *guidance* in *MCOB 7* with *rules* and *guidance* from *MCOB 9.7* and *MCOB 9.8*.
- (4) The table in *MCOB 9.6.4R* disapplies certain *rules* in *MCOB 7* for the purposes of *MCOB 9*.

**9.6.2 R Table of modified cross-references to other rules:**

This table belongs to *MCOB 9.6.1R*.

<b>Subject</b>	<b>Rule or guidance</b>	<b>Reference in rule or guidance</b>	<b>To be read as a reference to:</b>
Application	<i>MCOB 7.1.4R</i>	<i>MCOB 7.6.7R - MCOB 7.7.4R</i>	<i>MCOB 7.6.7R - MCOB 7.6.33G</i> as modified by <i>MCOB 9.8.5R-9.8.9R</i>

<b>Application</b>	<i>MCOB 7.1.5R</i>	<i>MCOB 7.5 - MCOB 7.7.4R</i>	<i>MCOB 7.5.- - MCOB 7.6.33G as modified by MCOB 9.8</i>
<b>Information in more than one document</b>	<i>MCOB 7.3.3R</i>	<i>MCOB 7</i>	<i>MCOB 7 as modified by MCOB 9</i>
<b>Frequency of statements</b>	<i>MCOB 7.5.6G</i>	<i>MCOB 7.5.3R(2)</i>	<i>MCOB 9.8.1R(2)</i>
<b>Cost of redeeming</b>	<i>MCOB 7.5.7R</i>	<i>MCOB 7.5.3R(4)(e)</i>	<i>MCOB 9.8.1R(4)(d)</i>
<b>Annual statement – additional content</b>	<i>MCOB 7.5.9G</i>	<i>MCOB 7.5.3R(2)(b)</i>	<i>MCOB 9.8.1R</i>
<b>Further advances</b>	<i>MCOB 7.6.7R</i>	<i>MCOB 5</i>	<i>MCOB 9.4</i>
<b>Further advances</b>	<i>MCOB 7.6.10G</i>	<i>MCOB 7.6.9R(1)</i>	<i>MCOB 9.8.5R(1)</i>
<b>Further advances</b>	<i>MCOB 7.6.10G</i>	<i>MCOB 5.6.34</i>	<i>MCOB 9.4.114R</i>
<b>Further advances</b>	<i>MCOB 7.6.11G</i>	<i>MCOB 7.6.9R(3) and (4)</i>	<i>MCOB 9.8.5R(3)</i>
<b>Further advances</b>	<i>MCOB 7.6.11G(2)</i>	<i>MCOB 5.6.40R</i>	<i>MCOB 9.4.37R</i>
<b>Further advances</b>	<i>MCOB 7.6.12G</i>	<i>MCOB 7.6.9R(3)</i>	<i>MCOB 9.8.5R(3)</i>
<b>Further advances</b>	<i>MCOB 7.6.13R</i>	<i>MCOB 5.6.25R(2)(a)</i>	<i>MCOB 9.4.24R(4)(a)</i>
<b>Further advances</b>	<i>MCOB 7.6.13R</i>	<i>MCOB 7.6.9R(3)(b)</i>	<i>MCOB 9.8.5R(3)(b)</i>
<b>Further advances</b>	<i>MCOB 7.6.14R</i>	<i>MCOB 5</i>	<i>MCOB 9</i>
<b>Rate switches</b>	<i>MCOB 7.6.18R</i>		

Rate switches	<i>MCOB</i> 7.6.20R		
Addition or removal of party to contract	<i>MCOB</i> 7.6.22R(1)		
Addition or removal of party to contract	<i>MCOB</i> 7.6.25R		
Changes to payments	<i>MCOB</i> 7.6.29G	<i>MCOB</i> 7.6.28R	<i>MCOB</i> 9.8.9R or <i>MCOB</i> 9.8.10R
Changes to payments	<i>MCOB</i> 7.6.30G		
Use of illustrations	<i>MCOB</i> 7.6.31R		
Use of illustrations	<i>MCOB</i> 7.6.31R	<i>MCOB</i> 5	<i>MCOB</i> 9
Use of illustrations	<i>MCOB</i> 7.6.32R	<i>MCOB</i> 7.6.28R	<i>MCOB</i> 9.8.9R or <i>MCOB</i> 9.8.10R
Use of illustrations	<i>MCOB</i> 7.6.32R	<i>MCOB</i> 7.6.18R and <i>MCOB</i> 7.6.22R	<i>MCOB</i> 7.6.18R and <i>MCOB</i> 7.6.22R as modified by <i>MCOB</i> 9
Simultaneous requests	<i>MCOB</i> 7.6.33G		
Simultaneous requests	<i>MCOB</i> 7.6.33G	<i>MCOB</i> 5	<i>MCOB</i> 9

9.6.3

R Table of rules in *MCOB* 7 replaced by rules in this chapter:

This table belongs to *MCOB* 9.6.1R.

Subject	Rule or guidance	Rule replaced by:
Information at start of contract	<i>MCOB</i> 7.4	<i>MCOB</i> 9.7
Content of statement	<i>MCOB</i> 7.5.3R	<i>MCOB</i> 9.8.1R
Frequency of statements	<i>MCOB</i> 7.5.5R	<i>MCOB</i> 9.8.2R
Event-driven information	<i>MCOB</i> 7.6.1R	<i>MCOB</i> 9.8.3R

Release of additional borrowing	<i>MCOB 7.6.6G</i>	<i>MCOB 9.8.4G</i>
Further advances	<i>MCOB 7.6.9R</i>	<i>MCOB 9.8.5R</i>
Further advances	<i>MCOB 7.6.16R</i>	<i>MCOB 9.8.7R</i>
Addition or removal of party to contract	<i>MCOB 7.6.27R</i>	<i>MCOB 9.8.8R</i>
Changes to payments	<i>MCOB 7.6.28R</i>	<i>MCOB 9.8.9R and MCOB 9.8.10R</i>

9.6.4 R Table of rules in *MCOB 7* which do not apply in relation to regulated lifetime mortgage contracts:

This table belongs to *MCOB 9.6.1R*.

Subject	Rule
Annual statements: content	<i>MCOB 7.5.4R</i>
Business loans	<i>MCOB 7.7</i>

9.7 Disclosure at the start of the contract

9.7.1 G *MCOB 9.7* applies to a firm when it enters into a regulated lifetime mortgage contract

Disclosure requirements where interest payments are required

9.7.2 R A firm that enters into a regulated lifetime mortgage contract with a customer where interest payments are required (whether or not they will be collected by deduction from the income from an annuity or other linked investment product) must provide the customer with the following information before the customer makes the first payment under the contract:

- (1) the amount of the first payment required;
- (2) the amount of the subsequent payments;
- (3) the method by which the payments will be collected (for example, by direct debit or by deduction from a linked investment product such as an annuity) and the frequency of such payments and the date of collection of the first and subsequent payments;
- (4) the net amount which the customer will receive, where the interest payment is deducted from the income generated by a linked investment product such as an annuity, and the method by which this amount will be paid to the customer;

- (5) confirmation of whether in connection with the *regulated lifetime mortgage contract* insurance products such as buildings and contents insurance or payment protection insurance) have been purchased through the *firm*;
- (6) the first premium (and subsequent premiums where different) for insurance products purchased through the *firm* in connection with the *regulated lifetime mortgage contract*;
- (7) confirmation of whether the insurance premiums are to be collected with the mortgage payment or separately (where the latter applies, the *firm* must give details or state that these will be confirmed separately);
- (8) confirmation that the *regulated lifetime mortgage contract* is on an interest-only basis, and details of how the *firm* expects the capital to be repaid (for example, from the proceeds of the sale of the property);
- (9) if it is possible for *arrears* to occur, what to do if the *customer* falls into *arrears*, explaining the benefit of making early contact with the *firm*, providing the name, address and telephone of a contact point with the *firm*, and drawing the *customer's* attention to the *arrears* charges set out in the *tariff of charges*;
- (10) confirmation of any *linked borrowing* and *linked deposits* that are available; and
- (11) whether the *regulated lifetime mortgage contract* permits the *customer* to make any overpayments or underpayments of the amounts due.

9.7.3 R The information in *MCOB 9.7.2R* must be provided to the *customer* in a single communication, except (5), (6) and (9) which may be provided separately.

Disclosure requirements where the regulated lifetime mortgage contract is a drawdown mortgage with fixed payments to the customer

9.7.4 R A *firm* that enters into a *regulated lifetime mortgage contract* which is a *drawdown mortgage*, with fixed payments to the *customer*, must provide the *customer* with the following information before the first payment is drawn down by the *customer*:

- (1) the amount of the first payment to be made;
- (2) the amount of subsequent payments, if different;



- (3) the method by which the payment will be made (for example, by transfer to the *customer's* bank account) and the date of issue of the first and subsequent payments;
- (4) confirmation of whether in connection with the *regulated lifetime mortgage contract* insurance products such as buildings and contents insurance or payment protection insurance) have been purchased through the *firm*;
- (5) the first premium (and subsequent premiums where different) for insurance products purchased through the *firm* in connection with the *regulated lifetime mortgage contract*;
- (6) confirmation of the method and date of collection of the premiums for insurance products purchased through the *firm*;
- (7) details of how the *firm* expects the capital and interest to be repaid (for example from the proceeds of the sale of the property);
- (8) confirmation of any *linked borrowing* and *linked deposits* that are available; and
- (9) whether the *regulated lifetime mortgage contract* permits the *customer* to make any repayments on the *regulated lifetime mortgage contract*.

9.7.5 R The information in *MCOB 9.7.4R* must be provided to the *customer* in a single communication, except (4), (5) and (6) which may be provided separately.

Disclosure requirements where the regulated lifetime mortgage contract is a drawdown mortgage without fixed payments to the customer

9.7.6 R Where the *regulated lifetime mortgage contract* is a *drawdown mortgage* and the *customer* can choose the amount and frequency of the payments they receive, or the amount and frequency of payments can vary for other reasons (for example in line with interest rates) the *firm* must provide the *customer* with the following information before the first payment is drawn down by the *customer*:

- (1) (a) where the *customer* can choose the amount and frequency of the payments they receive, details of any limitations to the amount and frequency of the payments which the *customer* may request; or
- (b) where the amount and frequency of payments can vary for other reasons (for example in line with

interest rates), the amount of the first payment and details of how the amount and frequency of the payments can be varied in future;

- (2) the method by which the payment will be made (for example, by transfer to the *customer's* bank account);
- (3) confirmation of whether in connection with the *regulated lifetime mortgage contract* insurance products such as buildings and contents insurance or payment protection insurance) have been purchased through the *firm*.
- (4) the first premium (and subsequent premiums where different) for insurance products purchased through the *firm* in connection with the *regulated lifetime mortgage contract*;
- (5) confirmation of the method and date of collection of the premiums for insurance products purchased through the *firm*;
- (6) details of how the *firm* expects the capital and interest to be repaid (for example from the proceeds of the sale of the property);
- (7) confirmation of any *linked borrowing* and *linked deposits* that are available; and
- (8) whether the regulated lifetime mortgage contract permits the *customer* to make any repayments on the *regulated lifetime mortgage contract*.

9.7.7 R The information in *MCOB 9.7.6R* must be provided to the *customer* in a single communication, except (3), (4) and (5) which may be provided separately

Disclosure requirements where a lump sum payment is made to the customer and interest is rolled up

9.7.8 R Where the *regulated lifetime mortgage contract* provides for a lump sum payment to be made to the *customer*, and all or part of the interest will be rolled up during the life of the mortgage, the *firm* must provide the *customer* with the following information before the *customer* makes the first payment under the contract, or if no payments are required from the *customer*, within seven days of completion of the mortgage:

- (1) if no payments are required from the *customer*, confirmation that no payments are required and details of how the *firm* expects the capital and interest to be repaid (for example from the proceeds of the sale of the property);

- (2) if payments are required from the *customer*:
  - (a) the amount of the first payment required;
  - (b) the amount of the subsequent payments;
  - (c) the method by which the payments will be collected, the frequency of such payments and the date of collection of the first and subsequent payments; and
  - (d) what to do if the *customer* falls into *arrears*, explaining the benefit of making early contact with the *firm*, providing the name, address and telephone of a contact point with the *firm*, and drawing the *customer's* attention to the *arrears* charges set out in the *tariff of charges*;
- (3) confirmation of whether in connection with the *regulated lifetime mortgage contract* insurance products such as buildings and contents insurance or payment protection insurance) have been purchased through the *firm*.
- (4) the amount of the first premium (and subsequent premiums where different) for insurance products purchased through the *firm* in connection with the *regulated lifetime mortgage contract* ;
- (5) confirmation of the method and date of collection of the premiums for insurance products purchased through the *firm*. in connection with the *regulated lifetime mortgage contract*;
- (6) confirmation of any *linked borrowing* and *linked deposits* that are available; and
- (7) whether the regulated lifetime mortgage contract permits the *customer* to make any overpayments or underpayments of the amounts due.

9.7.9 R The information in *MCOB 9.7.8R* must be provided to the *customer* in a single communication, except (3) (4) and (5) which may be provided separately

**Record keeping requirements**

9.7.10 R (1) A *firm* must make and retain an adequate record of the information that it provides to each *customer* at the start of the *regulated lifetime mortgage contract* in accordance with this section.

- (2) The record required by (1) must be maintained for a year from the date that the information is provided to the *customer*.

## 9.8

### Disclosure after sale

#### Annual statements: content

### 9.8.1

- R** The statement required by *MCOB 7.5.1R* must contain the following information:
- (1) except in the case of *mortgage credit cards*, information on the type of *regulated lifetime mortgage contract*, (for example, fixed rate or variable rate) including a clear statement of how the *firm* expects the capital, or capital and interest (whichever is applicable) to be repaid (for example, from the proceeds of the sale of the property);
  - (2) details of the following transactions and information on the *regulated lifetime mortgage contract* during the period since the last statement (or, where the statement is the first statement, since the *customer* entered into the *regulated lifetime mortgage contract*):
    - (a) (if applicable) the date and amount of each payment made by the *customer*;
    - (b) (if applicable) the amount of each payment that was due from the *customer* during the statement period;
    - (c) for *drawdown mortgages*, the date and amount of each payment made to the *customer*;
    - (d) the rates(s) of interest applicable to the *regulated lifetime mortgage contract* during the statement period and, if applicable, the date(s) on which the rate(s) of interest changed;
    - (e) the amount of interest charged under the *regulated lifetime mortgage contract* during the statement period; and
    - (f) any other amounts charged under the *regulated lifetime mortgage contract* during the statement period, including fees and any amounts due in relation to *tied products*;
  - (3) where it is possible for *arrears* to occur, a reminder that the *customer* should contact the *firm* if they are unable to make their regular payments under the *regulated lifetime mortgage contract*; and

- (4) information at the date the statement is issued on:
- (a) the amount owed by the customer under the *regulated lifetime mortgage contract*;
  - (b) the date at which any *early repayment charges* on the *regulated lifetime mortgage contract* cease to apply, and the circumstances under which they will not apply;
  - (c) where applicable, the *early repayment charge* that applies, expressed as a monetary amount (see *MCOB 9.4.83R*);
  - (d) the cost of redeeming the *regulated lifetime mortgage contract* at the date that the statement is issued (this must be shown as the sum of *MCOB 9.8.1R(4)(a)* and *MCOB 9.8.1R(4)(c)* plus any other charges that can be quantified at the date the statement is issued). If additional charges are payable that cannot be quantified at the point that the statement is issued (for example if the *customer* is in *arrears*) a warning must be included to that effect (see *MCOB 7.5.7R* regarding what is included in the cost of redeeming the *regulated lifetime mortgage contract*); and
  - (e) where applicable, the date on which the requirement for the *customer* to purchase any *tied products* from the *firm* comes an end.

9.8.2 R Where a *firm* provides a *customer* with a statement containing the information set out in *MCOB 9.8.1R(2)* more frequently than once a year, the information set out in *MCOB 9.8.1R(1)*, *MCOB 9.8.1R(3)* and *MCOB 9.8.1R(4)* may be provided in a separate communication, but must be provided at least once a year.

Event driven information

9.8.3 R A *firm* must give the *customer* reasonable notice, in advance, of any of the following:

- (1) any changes to the payments that the *customer* is required to make (where payments are required, and whether or not they are collected by deduction from the income provided by a linked *investment* product such as annuity) resulting from interest rate changes;
- (2) the exercising of the *firm's* right (if allowed by the terms of the *regulated lifetime mortgage contract*) to enter the property to carry out essential repairs and maintenance

(the cost must be confirmed to the *customer* where this will be added to the mortgage debt); and

- (3) any material change by the *firm* (other than changes which come within *MCOB* 7.6.2R or are included in *MCOB* 9.8.3R(1) and (2)) to the terms and conditions of the *regulated lifetime mortgage contract*, where that change is permitted without the *customer's* prior consent.

9.8.4 G Examples of where *MCOB* 7.6.5R will apply are the release of tranches of money to the *customer* in relation to a self-build mortgage or other instalment mortgage, but not a *drawdown mortgage*.

#### Further advances

9.8.5 R The *illustration* provided in accordance with *MCOB* 7.6.7R must;

- (1) be based on the amount of the further advance only;
- (2) use the term 'additional borrowing' in place of the term 'lifetime mortgage' where appropriate throughout the titles and text of the *illustration*;
- (3) include an additional section headed: 'Total borrowing' and numbered '9' after Section 8, (with subsequent sections of the *illustration* renumbered accordingly) including the following text:
  - (a) "This section gives you information about how your lifetime mortgage will be affected by taking out this additional borrowing. Talk to [your mortgage lender][insert name of mortgage lender] if you are not sure of the details of your current lifetime mortgage.";
  - (b) a clear statement explaining the total amount that the *customer* will owe if he takes out the additional borrowing; and,
    - (i) where payments are required on the *regulated lifetime mortgage contract*, what the *customer's* new payments will be; or
    - (ii) where the *regulated lifetime mortgage contract* is a *roll-up of interest mortgage*, the effect on the amount the *customer* would owe at the end of the estimated term and details of the estimated term that has been used (see *MCOB* 9.8.6G for guidance on the estimated term).

9.8.6 G The estimated term required at *MCOB* 9.8.5R(3)(b)(ii) may be:

- (1) the term originally estimated in accordance with *MCOB* 9.4.10R; or
- (2) where the term originally estimated in accordance with *MCOB* 9.4.10R has expired, a revised estimate in accordance with *MCOB* 9.4.10R; or
- (3) a term of the customer's choice, if the customer expresses a preference.

**9.8.7 R** *MCOB* 9.4.18R is replaced with the following:

**“Section 1: ‘About this information’**

**Under the section heading ‘About this information’, the following text must be included:**

**“We are required by the Financial Services Authority (FSA) – the independent watchdog that regulates financial services – to provide you with this illustration.**

**All firms selling lifetime mortgages are required to give illustrations, like this one, that contain similar information presented in the same way.”**

**Addition or removal of a party to a contract**

**9.8.8 R** For the purposes of *MCOB* 7.6.22R, *MCOB* 9.4.19R is replaced with the following;

**“Section 2: ‘Which service are we providing you with?’**

**Under the section heading ‘Which service are we providing you with?’ the following text should be included:**

**“We are providing you with an illustration for the addition/removal of a party/parties to this lifetime mortgage. You must make your own choice about whether changing the parties to this lifetime mortgage is right for you.”**

**Changes to payments, amounts drawn down and amount owed**

**9.8.9 R** If a *customer* requests, or agrees to, a change to a *regulated lifetime mortgage contract* (other than a change as described in *MCOB* 7.6.7R to *MCOB* 7.6.27R (as modified by *MCOB* 9)) that changes the amount of each payment due (where payments are required), a *firm* must provide the *customer* with the following information, in a single communication, before the change takes effect:

- (1) the amount outstanding on the *regulated lifetime mortgage contract* at the date the change is requested;

- (2) the payment due and the frequency of payments; where it is known that the payment will change (for example at the end of a fixed rate period), the new payment and the date of the change must also be shown;
- (3) the rate of interest applying to the *regulated lifetime mortgage contract*; where it is known that the rate of interest will change, the new rate and the date of the change must also be shown;
- (4) the type of interest rate (for example fixed, or discounted); where it is known that the type of interest rate will change the new type and the date of the change must also be shown;
- (5) details of any charges that apply for changing the *regulated lifetime mortgage contract*.

**9.8.10**

**R** If a *customer* requests, or agrees to, a change to a *regulated lifetime mortgage contract* (other than a change as described in *MCOB 7.6.7R* to *MCOB 7.6.27R* (as modified by *MCOB 9*)) that changes the amount paid to the *customer* under a *drawdown mortgage*, or the amount that the customer will owe under a *roll-up of interest mortgage*, or both, a *firm* must provide the *customer* with the following information, in a single communication, before the change takes effect:

- (1) the amount outstanding on the *regulated lifetime mortgage contract* at the date the change is requested;
- (2) (if applicable) the revised amount to be paid to the *customer* under the *drawdown mortgage* and the frequency of payments;
- (3) (a) an estimate of the revised amount that will be owed at the end of the term; or  
 (b) (if the original term has expired) a revised estimate;  
 in accordance with *MCOB 9.4.10R*;
- (4) the rate of interest applying to the *regulated lifetime mortgage contract*; where it is known that the rate of interest will change, the new rate and the date of the change must also be shown;
- (5) the type of interest rate (for example fixed, or discounted); where it is known that the type of interest rate will change the new type and the date of the change must also be shown;
- (6) details of any charges that apply for changing the *regulated lifetime mortgage contract*.



## MCOB 9 Annex 1R

The illustration: table of contents, prescribed text and prescribed section headings and subheadings (R).

1. This annex forms part of *MCOB 9.4.2R*.
2. The underlined text indicates instructions that must not be included in the *illustrations provided to customers*

# keyfacts about this lifetime mortgage

**Personalised information on a lifetime mortgage for insert customer's name; see *MCOB 9.4.17R(1)***

**Date produced: insert date - see *MCOB 9.4.17R(2)***

**Insert details of how long the *illustration* is valid for, and if appropriate when the mortgage needs to commence by - see *MCOB 9.4.17R(3)*.**

This is not a legally binding mortgage offer and it does not oblige [name of *mortgage lender*] to provide you with the mortgage described in this illustration.

### 1. About this information

- We are required by the Financial Services Authority (FSA) – the independent watchdog that regulates financial services - to provide you with this illustration.
- All firms selling lifetime mortgages are required to give you illustrations like this one, that contain similar information presented in the same way.
- Ask for other illustrations if you want to compare this lifetime mortgage with lifetime mortgages from other lenders.
- The FSA provides useful information on lifetime mortgages and other ways of releasing equity from your home in a booklet called [title to be inserted<sup>1</sup>]. You can get this free through the FSA website [www.fsa.gov.uk/consumer](http://www.fsa.gov.uk/consumer) or by calling 0845 606 1234.

### 2. Which service are we providing you with?

	<b>We recommend</b> , having assessed your needs, that you take out this lifetime mortgage.
	<b>We are not recommending</b> a particular lifetime mortgage for you. However, based on your answers to some questions we are giving you information about this lifetime mortgage so that you can make your own choice, or find out about other ways in which you may be able to release equity from your home

<sup>1</sup> Booklet to be produced by implementation date of MCOB 9

### 3. What is a lifetime mortgage?

Important information from the Financial Services Authority:

- A lifetime mortgage is a special type of loan which is usually designed to run for the rest of your life, and which means that you borrow money that is secured on your home to give you a lump sum and/or a regular income. The amount you owe to the lender is usually paid back from the proceeds of the sale of your home after your death. If you are borrowing with someone else this would be after the death of the last borrower. Any money left over would be paid to your beneficiaries.
- If you buy a new home, you may be able to transfer your lifetime mortgage to your new home, or you may be able to get a new lifetime mortgage. Otherwise you will usually have to repay the amount you owe to the lender from the money you get from the sale of your home. Any money left over belongs to you.
- If you move into sheltered accommodation or long term care you will usually have to repay the amount you owe to the lender from the money you get from the sale of your home. Again, any money left over belongs to you. If you are borrowing jointly with someone else and one of you needs to move into long-term care, you don't usually have to sell your home until the last borrower either dies or moves into long-term care or another property.
- If you decide that you simply don't want the lifetime mortgage any more, you can repay the amount you owe to the lender at any time, but the lender may make an early repayment charge if you do. Section 13 of this illustration will tell you if any early repayment charges apply to this mortgage.
- Some lifetime mortgages are linked to an investment - this means you borrow a lump sum which is invested (for example in an annuity) to give you a regular income. If this happens the full details of the investment will be shown in a separate document and it is important to read both documents together.

### 4. What you have told us

See MCOB 9.4.21R- MCOB 9.4.23G

### 5. Description of this mortgage

See MCOB 9.4.24R- MCOB 9.4.30G

For foreign currency mortgages see MCOB 9.4.128R- MCOB 9.4.129R

For *shared appreciation mortgages* see MCOB 9.4.130R - MCOB 9.4.132R

<b>6. Benefits</b>	
See <i>MCOB</i> 9.4.31R(1)	£X
<b>Your net income:</b> <u>This box only required where the <i>regulated lifetime mortgage contract</i> is linked to an <i>investment</i> and the payments due on the <i>regulated lifetime mortgage contract</i> are deducted from the income from the <i>investment</i> – see <i>MCOB</i> 9.4.31R(2)</u>	
<b>Other benefits and incentives</b> See <i>MCOB</i> 9.4.31R(3)	

<b>7. Risks – important things you must consider</b>
See <i>MCOB</i> 9.4.33R to <i>MCOB</i> 9.4.35R

<b>8. What you will owe and when</b> (A) details of mortgage payments - this section is only required where the <i>customer</i> is required to make payments to the <i>mortgage lender</i> in respect of all or part of the interest payable See <i>MCOB</i> 9.4.36G	[insert frequency of payments – see <i>MCOB</i> 9.4.37R]
See <i>MCOB</i> 9.4.37R to <i>MCOB</i> 9.4.46R.	£
<u>This section is required only for multi-part mortgages where there is a future change in the interest rate(s) charged.</u> <b>What you will owe in future</b>	[insert frequency of payments – see <i>MCOB</i> 9.4.37R]
See <i>MCOB</i> 9.4.47R - <i>MCOB</i> 9.4.48R	Insert amounts(s)

<b>8. What you will owe and when</b> (B) projection of roll-up of interest - this section is only required where the <i>customer</i> is not required to make payments to the <i>mortgage lender</i> in respect of all or part of the interest payable- See <i>MCOB</i> 9.4.49G					
See <i>MCOB</i> 9.4.50R “This shows how the amount(s) paid to you and the interest and any fees that we charge mount up over [insert number of years] years. It has been calculated using the current interest rate of [insert interest rate]. Interest is added to the amount you owe [insert frequency of roll-up of interest – e.g monthly] Remember that the mortgage could run for a longer or shorter time than [insert number of years] years, and if it runs for longer the amount you owe will carry on increasing.”					
<b>Year</b>	<b>Balance at start of year</b>	<b>Amount paid to you during the year £</b>	<b>Interest charged at x %</b>	<b>Fees charged during the year</b>	<b>What you owe at end of year £</b>
See <i>MCOB</i> 9.4.51R(1)	See <i>MCOB</i> 9.4.51R(2)	See <i>MCOB</i> 9.4.51R(3).	See <i>MCOB</i> 9.4.51R(4).	See <i>MCOB</i> 9.4.51R(5).	See <i>MCOB</i> 9.4.51R(6).

<b>9. Total borrowing</b> [for further advances only – if used subsequent sections will be renumbered] See <u>MCOB 9.8.5R</u>
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<b>9. Will the interest rate change?</b> See <u>MCOB 9.4.53R – MCOB 9.4.61G</u>
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<b>10. How the value of your home could change</b> See <u>MCOB 9.4.62R- MCOB 9.4.64R</u>  <u>For shared appreciation mortgages see MCOB 9.4.130R(2)</u>
--

<b>11. What fees must you pay?</b>	<b>Fee amount</b>
<b>Fees payable to [insert name of mortgage lender]</b>  <u>See MCOB 9.4.65R to MCOB 9.6.71R</u>	<u>Insert amount of each fee</u>
<b>Other fees</b> <u>See MCOB 9.4.65R to MCOB 9.6.71R</u>	<u>Insert amount of each fee</u>

<b>12. Insurance</b>	<b><u>insert frequency of payments for premium quoted payments</u></b>
<b>Insurance you must take out through [insert name of mortgage lender or mortgage intermediary]</b> <u>See MCOB 9.4.72R to MCOB 9.4.75R and MCOB 9.4.81R</u>	£
<b>Insurance you must take out as a condition of this lifetime mortgage but that you do not have to take out through [insert name of mortgage lender or mortgage intermediary]</b> <u>See MCOB 9.4.76R to MCOB 9.4.78G MCOB 9.4.81R</u>	£
<b>Optional insurance</b> <u>This box is only required where quotations for optional insurance are provided in the illustration. See MCOB 9.4.79R to MCOB 9.4.80R and MCOB 9.4.81R</u>	£

<b>13. What happens if you do not want this mortgage any more?</b>
<b>Early repayment charges</b> <u>See MCOB 9.4.83R to MCOB 9.4.90R.</u>  <u>For shared appreciation mortgages see MCOB 9.4.130R(3)</u>
<b>Circumstances in which early repayment charges do not apply</b> <u>See MCOB 9.4.83R(2).</u>

**14. Additional features**

See *MCOB 9.4.91R to MCOB 9.4.110R*

**15. Overall cost of this mortgage**

See *MCOB 9.4.111R to MCOB 9.4.112G*

See *MCOB 9.4.113R*

The total amount you would pay back over the example term of [insert number of years ] including the amount borrowed is:

£[insert details]

The overall cost for comparison is:

[insert details]% APR

See *MCOB 9.4.116R*

*For shared appreciation mortgages see MCOB 9.4.130R(4)*

**16. Using a mortgage intermediary**

This section is required only when the illustration is provided to a customer by a mortgage intermediary. If the illustration is provided by a mortgage lender, this section must be removed

See *MCOB 9.4.119R to MCOB 9.4.125G*

**Contact details**

See *MCOB 9.4.126R to MCOB 9.4.127G*

## 10 ANNUAL PERCENTAGE RATE

### 10.1 Application

- 10.1.1 R This chapter applies to a *firm* which, under *rules* elsewhere in *MCOB*, is required to calculate an *annual percentage rate of charge (APR)*.

### 10.2 Purpose

- 10.2.1 G The purpose of this chapter is to establish the requirements for the proper calculation of the *APR*. As a cost measure which facilitates comparisons between similar mortgages offered on a similar basis, the *APR* is an integral element of the *rules* relating to *qualifying credit promotions* and disclosure.

### 10.3 Formula and assumptions for calculating the APR

#### Formula for calculating the APR

- 10.3.1 R (1) The *APR* must be calculated so that, subject to (4), the *annual percentage rate of charge* is the rate for *i* which satisfies the equation set out in (2), expressed as a percentage.

- (2) The equation referred to in (1) is:

$$\sum_{K=1}^{K=m} \frac{A_K}{(1+i)^{t_K}} = \sum_{K'=1}^{K'=m'} \frac{A'_{K'}}{(1+i)^{t_{K'}}$$

where

**K** is the number identifying a particular advance of credit;

**K'** is the number identifying a particular instalment;

**A<sub>K</sub>** is the amount of advance **K**;

**A'<sub>K'</sub>** is the amount of instalment **K'**;

**Σ** represents the sum of all the terms indicated;

**m** is the number of advances of credit;

**m'** is the total number of instalments;

**t<sub>K</sub>** is the interval, expressed in years, between the *relevant date* and the date of the second advance and those of any subsequent advances numbered three to **m**; and

'K' is the interval, expressed in years, between the *relevant date* and the dates of instalments numbered one to m'.

- (3) In (2), references to instalments are references to any payment made by or on behalf of the *customer* which comprise:
- (a) a repayment of all or part of the credit under the contract; or
  - (b) a payment of all or part of the *total charge for credit*; or
  - (c) both a repayment of all or part of the credit and a payment of all or part of the *total charge for credit*.
- (4) Where more than one rate is given under (1), the *APR* is the positive rate nearest to zero or, if no positive rate is given, the negative rate nearest to zero.

10.3.2 G This calculation method is the same (with the exception of *MCOB* 10.3.8R(1) and (2)) as that described in the Consumer Credit (Total Charge for Credit) Regulations 1980 (SI 1980/51) as amended. Because of this, some of the terminology is different from that used elsewhere in *MCOB*, e.g. the references to 'transactions' should be read as relating to *secured lending*. As a guide for *firms*, *MCOB* 10 Annex 1G lists the substantively identical provisions in *MCOB* 10 and the 1980 Regulations.

**APR calculation: assumptions as to the credit provided**

- 10.3.3 R (1) The *APR* must be calculated on the basis of the following assumptions:
- (a) the assumption that the *customer* will not be entitled to any income tax relief relating to the transaction other than relief under sections 266–7 of the Income and Corporation Taxes Act 1988 and Schedule 14-15 to the same Act without any deduction under section 274 of the Income and Corporation Taxes Act 1988;
  - (b) the assumption that no assistance is given under the Home Purchase Assistance and Housing Corporation Guarantee Act 1978;
  - (c) (i) in the case of a transaction which provides for repayment of the credit or of the *total charge for credit* at or not later than a specified time or times, the assumption that the *mortgage lender* or *mortgage administrator* will not exercise any right under the

transaction to require repayment at any other time or times; and

- (ii) in any other case, the assumption that the *mortgage lender* or *mortgage administrator* will not exercise any right under the transaction to require payment;

the *customer*, in any case, performing all his obligations under the transaction;

- (d) unless (e) applies, in the case of a transaction which provides for variation of the rate or amount of any item included in the *total charge for credit* in consequence of the occurrence after the *relevant date* of any event, the assumption that the event will not occur; and, in this sub-paragraph, ‘event’ means an act or omission of the *customer* or of the *mortgage lender* or *mortgage administrator* or any other event (including, where the transaction makes provision for variation upon the continuation of any circumstance, the continuation of that circumstance) but does not include an event which is certain to occur and of which the date of occurrence, or the earliest date of occurrence, can be ascertained at the date of the making of the agreement; and
- (e) in the case of a *secured lending* contract which provides for the possibility of any variation of the rate of interest in consequence of the occurrence after the *relevant date* of any event (being an event which is certain to occur and of which the date of occurrence, or the earliest date of occurrence, can be ascertained at the date of the making of the agreement), the assumption that such a variation will, when the event occurs, take place.

(2) For the purposes this chapter:

- (a) an item included in the *total charge for credit* must not be treated as credit, even if time is allowed for its payment;
- (b) subject to (c) and to *MCOB 10.3.13R*, in the case of any agreement, each provision of credit and each repayment of the credit and of the *total charge for credit* must be taken to be made:
  - (i) at the earliest time provided under the transaction; and



- (ii) in a case where any such provision or repayment is to be made at or not later than a specified time, at that time;

and, where any such repayment is to be made before the *relevant date*, it must be taken to be made on the *relevant date*;

- (c) where, under an agreement for *running-account credit* or an agreement for *fixed-sum credit* where the credit is not repayable at specified intervals or in specified amounts, a constant period rate of charge in respect of periods of equal or of nearly equal length is charged, it must be assumed, despite *MCOB 10.3.12R*, that:

- (i) the amount of credit outstanding at the beginning of a period is to remain outstanding throughout the period;

- (ii) the amount of any credit provided during a period is provided immediately after the end of the period; and

- (iii) any repayment of credit or of the *total charge for credit* made during a period is made immediately after the end of the period; and

- (d) it must be assumed that the amount of any repayment of credit or of the *total charge for credit* will, at the time when the repayment is made, be the smallest for which the agreement provides.

#### APR calculation: rounding

10.3.4 R Where the *APR*, as calculated in accordance with *MCOB 10.3.1R*, has more than one decimal place it must be rounded to one decimal place as follows:

- (1) where the figure at the second decimal place is greater than or equal to five, the figure at the first decimal place must be increased by one and the decimal place (or places) following the first decimal place must be disregarded; and
- (2) where the figure at the second decimal place is less than five, that decimal place and any decimal places following it must be disregarded.

#### APR calculation: the calculation of any period

10.3.5 R For the purposes of calculations under this chapter, the length of any period must be calculated as follows:

- (1) a period which is not a whole number of calendar months or a whole number of weeks must be counted in years and days;**
- (2) subject to (3), a period which is a whole number of calendar months or a whole number of weeks must be counted in calendar months or in weeks, as the case may be;**
- (3) where a period is both a whole number of calendar months and a whole number of weeks and:**
  - (a) one repayment only is to be made, the period must be counted in calendar months,**
  - (b) more than one repayment is to be made:**
    - (i) if all such repayments are to be made at intervals from the relevant date of one or more weeks, the period must be counted in weeks; and**
    - (ii) in any other case, the period must be counted in calendar months;**
- (4) a period which is to be counted:**
  - (a) in calendar months must be taken to be of a length equal to the relevant number of twelfth parts of a year;**
  - (b) in weeks, must be taken to be of a length equal to the relevant number of fifty-second parts of a year.**
- (5) a day may be taken to be either:**
  - (a) one three hundred and sixty-fifth part of a year or, if it is a leap year, one three hundred and sixty-sixth part of a year; or**
  - (b) one three hundred and sixty fifth and a quarter part of a year.**
- (6) Every day must be taken to be a *business day*.**

**APR calculation: necessary assumptions**

- 10.3.6 R (1) *MCOB 10.3.7R to MCOB 10.3.13R* apply for the purpose of the calculation of the *total charge for credit* and of the rate of that charge in respect of matters necessary for the calculation which cannot be ascertained by the *mortgage lender* or *mortgage administrator* at the date of the making of the agreement.
- (2) In a case where *MCOB 10.3.7R* and one or more of *MCOB 10.3.8R to MCOB 10.3.13R* are applicable, *MCOB 10.3.7R* must be applied first.

**APR calculation: assumptions as to the amount of credit**

- 10.3.7 R (1) Where the amount of the credit to be provided under the agreement cannot be ascertained at the date of the making of the agreement:
- (a) in the case of an agreement for *running-account credit* under which there is a credit limit, that amount must be taken to be that credit limit; and
- (b) in any other case, that amount shall be taken to be £100.
- (2) Where a *mortgage lender* makes a further advance to the *customer* in addition to the amount originally borrowed under the *regulated mortgage contract*, the *APR* for the further advance must be calculated in respect of the further advance alone (and any related charges), and not in respect of the total amount borrowed.

**APR calculation: assumptions as to the period for which credit is provided**

- 10.3.8 R (1) In relation to a *regulated lifetime mortgage contract*, where the *APR* is calculated for the purpose of a *qualifying credit promotion* it must be assumed that the credit is being provided for a period of 15 years beginning with the *relevant date*.
- (2) In relation to a *regulated lifetime mortgage contract*, where the *APR* is calculated for the purpose of an *illustration*, the period for which the credit is to be provided must be calculated in accordance with *MCOB 9.4.10R* or *MCOB 9.4.12R*.
- (3) Where, in any other case, the period for which credit is to be provided is not ascertainable at the date of the making of

the agreement, it must be assumed that credit is provided for one year beginning with the *relevant date*.

**APR calculation: assumption where rate or amount is referenced to another factor**

- 10.3.9 R Subject to *MCOB 10.3.10R*, where the rate or amount of any item included in the *total charge for credit*, or the amount of any repayment of credit under a transaction, is to be ascertained by reference to the level of any index or other factor in accordance with a specified formula, the rate or amount must be taken to be the rate or amount so ascertained. The formula must be applied as if the level of the index or other factor subsisting at the date of the making of the agreement were that subsisting at the date by reference to which the formula is to be applied.

**APR calculation: assumptions where secured lending contracts provide for the variation in the rate of interest**

- 10.3.10 R (1) The assumptions in *MCOB 10.3.10R(3)* and (4) apply to any *secured lending* contracts which provide for the possibility of any variation of the rate of interest if it is to be assumed, under *MCOB 10.3.3R(1)(e)*, that the variation will take place but the amount of the variation cannot be ascertained at the date of the making of the agreement.
- (2) In this paragraph:
- (a) ‘initial standard variable rate’ means:
- (i) the standard variable rate of interest which would be applied by the *mortgage lender* or *mortgage administrator* to the agreement on the date of the making of the agreement if the agreement provided for interest to be paid at the *mortgage lender* or *mortgage administrator’s* standard variable rate with effect from that date; or
- (ii) if there is no such rate, the standard variable rate of interest applied by the *mortgage lender* or *mortgage administrator* on the day of the making of the agreement in question to other *secured lending* contracts or, where there is more than one such rate, the highest such rate;
- taking no account of any discount or other reduction to which the *customer* would or might be entitled;  
and

(b) 'varied rate' means any rate of interest charged when a variation of the rate of interest under *MCOB* 10.3.3R(1)(e) is to be assumed.

(3) Where a *secured lending* contract provides a formula for calculating a varied rate by reference to a standard variable rate of interest applied by the *firm*, or any other fluctuating rate of interest, but does not enable the varied rate to be ascertained at the date of the making of the agreement because it is not known on that date what the standard variable rate will be or (as the case may be) at what level the fluctuating rate will be fixed when the varied rate falls to be calculated, it must be assumed that that rate or level will be the same as the initial standard variable rate.

(4) Where a *secured lending* contract provides for the possibility of any variation in the rate of interest (other than a variation referred to in *MCOB* 10.3.10R(3)) which it is to be assumed, under *MCOB* 10.3.3R(1)(e), will take place, but does not enable the amount of that variation to be ascertained at the date of the making of the agreement, it must be assumed that the varied rate will be the same as the initial standard variable rate.

**APR calculation: further assumptions**

10.3.11 R Where:

(1) the period for which the credit, or any of it, is to be or may be provided cannot be ascertained at the date of the making of the agreement; and

(2) the rate or amount of any item included in the *total charge for credit* will change at a time provided in the transaction within one year beginning with the *relevant date*;

the rate or amount must be taken to be the highest rate or amount under the transaction at any time in that year.

10.3.12 R Where the earliest date on which credit is to be provided cannot be ascertained at the date of making of the agreement, it must be assumed that credit is provided on that date.

10.3.13 R In the case of any transaction, it must be assumed:

(1) that a charge payable at a time which cannot be ascertained at the date of the making of the agreement is to be payable on the *relevant date* or, where it may reasonably be expected that a *customer* will not make payment on that date, on the earliest date at which it may reasonably be expected that he will make payment; or

- (2) where more than one payment of a charge of the same description is to be made at times which cannot be ascertained at the date of the making of the agreement, that the first such payment will be payable on the *relevant date* (or, where it may reasonably be expected that a *customer* will not make payment on that date, at the earliest date on which it may reasonably be expected that he will make payment), that the last such payment will be payable at the end of the period for which credit is provided and that all other such payments (if any) will be payable at equal intervals between those times.

10.4 Total charge for credit

Make up of the total charge for credit

10.4.1 R For the purposes of this chapter, the *total charge for credit* which may be provided under an actual or prospective agreement is the total (determined as at the date of the making of the agreement) of the charges specified in *MCOB 10.4.2R* which apply in relation to the agreement, but excluding the charges specified in *MCOB 10.4.4R*.

Items included in the total charge for credit

10.4.2 R The amounts of the following charges are included in the *total charge for credit* in relation to an agreement, with the exceptions in *MCOB 10.4.4R*:

- (1) the total of the interest on the credit which may be provided under the agreement;
- (2) other charges at any time payable under the transaction by or on behalf of the *customer*, whether to the *firm* or any other person; and
- (3) a premium under a contract of insurance, payable under the transaction by the *customer*, where the making or maintenance of the contract of insurance is required by the *firm*:
  - (a) as a condition of making the agreement; and
  - (b) for the sole purpose of ensuring complete or partial repayment of the credit, and complete or partial payment to the *firm* of such of those charges included in the *total charge for credit* as are payable to him under the transaction, in the event of the death, invalidity, illness or unemployment of the *customer*;

**notwithstanding that the whole or part of the charge may be repayable at any time or that the consideration therefore may include matters not within the transaction or subsisting at a time not within the duration of the agreement.**

- 10.4.3 G (1) *MCOB 10.4.2R* means, for example, that the following charges must be included within the *total charge for credit*:
- (a) any fee payable to a *mortgage intermediary* for arranging the contract (see *MCOB 10.4.2R(2)*); and
  - (b) any *higher lending charge*.
- (2) The *FSA* takes the view that charges required to be included within the *total charge for credit* should not be excluded on the basis of these charges being refundable in certain circumstances.
- (3) The *FSA* also takes the view that the *total charge for credit* and *APR* should not reflect the ‘value’ of any cashback or similar incentive linked to the contract.

#### **Exclusions from the total charge for credit**

- 10.4.4 R (1) **The amounts of the following items are not included in the *total charge for credit* in relation to an agreement:**
- (a) **any charge payable under the transaction to the *firm* upon failure by the *customer* to do or to refrain from doing anything which he is required to do or to refrain from doing;**
  - (b) **any charge:**
    - (i) **which is payable by the *firm* to any person upon failure by the *customer* to do or to refrain from doing anything which he is required under the transaction to do or to refrain from doing; and**
    - (ii) **which the *firm* may under the transaction require the *customer* to pay to him or to another person on his behalf;**
  - (c) **any charge relating to a regulated *restricted-use credit agreement* to finance a transaction between the *customer* and the *firm* (whether forming part of that agreement or not), or to finance a transaction between the *customer* and a person (the “supplier”) other than the *firm* which would be payable if the transaction were for cash;**

- (d) any charge (other than a *fee* or commission charged by a credit-broker or *mortgage intermediary*) not within *MCOB 10.4.4R(1)(c)*:
  - (i) of a description which relates to services or benefits incidental to the agreement and also to other services or benefits which may be supplied to the *customer*; and
  - (ii) which is payable to fulfil an obligation incurred by the *customer* under arrangements which were effected before he applied to enter into the agreement and are not arrangements under which the *customer* is bound to enter into any personal credit agreement;
- (e) any charge under arrangements for the care, maintenance or protection of any land or goods (except as in *MCOB 10.4.4R(2)*);
- (f) charges for money transmission services relating to an arrangement for a current account under which the *customer* may, by cheques or similar orders payable to himself or to any other person, obtain or have the use of money held or made available by the *firm* and which records alterations in the financial relationship between the *firm* and *customer*, being charges which vary with the use made by the *customer* of the arrangement;
- (g) any charge for a guarantee other than a guarantee:
  - (i) which is required by the *firm* as a condition of making the agreement; and
  - (ii) the purpose of which is to ensure complete or partial repayment of the credit, and complete or partial payment to the *firm* of such of those charges included in the *total charge for credit* as are payable to him under the transaction, in the event of death, invalidity, illness or unemployment of the *customer*;
- (h) charges for the transfer of funds (other than charges within *MCOB 10.4.4R(1)(f)*) and charges for keeping an account intended to receive payments towards the repayment of the credit and the payment of interest and other charges, except where the *customer* does not have reasonable freedom of choice in the matter and where such charges are abnormally high; this



does not exclude from the *total charge for credit charges* for collection of the payments to which it refers, whether such payments are made in cash or otherwise; and

- (i) a premium under a contract of insurance other than a contract of insurance referred to in *MCOB 10.4.2R(3)*.
- (2) In the case of a charge within *MCOB 10.4.4R(1)(e)*, (1) has effect only:
- (a) where under the arrangement:
    - (i) the services are to be performed if, after the date of the making of the agreement, the condition of the land or goods becomes or is in immediate danger of becoming such that the land or goods cannot reasonably be enjoyed or used; and
    - (ii) the charge will not accrue unless the services are performed; or
  - (b) where:
    - (i) provision of substantially the same description as that to which the arrangements relate is available under comparable arrangements from a person who is not the *firm* or a supplier or a credit-broker or a *mortgage intermediary* who introduced the *customer* and the *firm*;
    - (ii) the arrangements are made with a person chosen by the *customer*; and
    - (iii) (if, in accordance with the transaction, the consent of the *firm* or of a supplier or of the *mortgage intermediary* or credit-broker who introduced the *customer* and the *firm* is required to the making of the agreement), where the transaction provides that such consent may not be unreasonably withheld whether because no incidental benefit will or may accrue to the *firm* or to the supplier or to the credit-broker or to the *mortgage intermediary* or on any other ground.
- (3) References in *MCOB 10.4.4R(2)* to the *firm*, a supplier, a *mortgage intermediary* and a credit-broker include

**references to his near relative, his partner and a member of a group of which he is a member, to any person nominated by him or any such person in relation to the arrangements, and to a near relative of his partner; and 'near relative' means, in relation to any person, the husband, wife, father, mother, brother, sister, son or daughter of that person and 'group' means the person (including a company) having control of a company together with all the companies directly or indirectly controlled by him.**

**A guide to the substantively identical provisions of MCOB 10 and the Consumer Credit (Total Charge for Credit) Regulations 1980**

This annex is intended as a reference aid for *firms* familiar with the existing consumer credit legislation regarding the calculation of the *APR*. This chapter is drafted to be substantively identical to this legislation (the primary differences being the adoption of *FSA* handbook terminology and the substitution of different internal references). The table gives the appropriate cross-reference for requirements in this chapter and the Total Charge for Credit Regulations.

Substantively Identical Provisions	
MCOB 10	Total Charge for Credit Regulations
10.3.1R	Regulation 7
10.3.3R	Regulation 2
10.3.4R	Regulation 6A
10.3.5R	Regulation 11
10.3.6R	Regulation 12
10.3.7R	Regulation 13
10.3.8R(3)	Regulation 14
10.3.9R	Regulation 15
10.3.10R	Regulation 15A
10.3.11R	Regulation 16
10.3.12R	Regulation 17
10.3.13R	Regulation 18
10.4.1R	Regulation 3
10.4.2R	Regulation 4
10.4.4R	Regulation 5

## 11 RESPONSIBLE LENDING

### 11.1 Application

#### Who?

11.1.1 R This chapter applies to a *firm* in a category listed in column (1) of the table in *MCOB 11.1.2R* in accordance with column (2) of that table.

11.1.2 R Table

This table belongs to *MCOB 11.1.1R*

(1) Category of firm	(2) Applicable section
<i>mortgage lender</i>	whole chapter

#### What?

11.1.3 R This chapter applies if a *firm*:

- (1) *enters into a regulated mortgage contract with a customer; or*
- (2) *makes a further advance or varies an existing regulated mortgage contract to make a further advance to a customer.*

### 11.2 Purpose

11.2.1 G *Principle 6* requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. This chapter reinforces *Principle 6* by requiring a *firm* in the circumstances described in *MCOB 11.1.3R* to take account of a *customer's* ability to repay before deciding to enter into a *regulated mortgage contract* or make a further advance on a *regulated mortgage contract*. The *FSA* regards it as important that *customers* should not be exploited by *firms* that lend in circumstances where they are self-evidently unable to repay through income and yet have no alternative means of repayment.

### 11.3 Responsible lending

#### Customer's ability to pay

- 11.3.1 R
- (1) A *firm* must be able to show that before deciding to enter into a *regulated mortgage contract with a customer, or making a further advance on a regulated mortgage contract, account was taken of the customer's ability to repay.*
  - (2) A *firm* must make an adequate record to demonstrate that it has taken account of the *customer's* ability to repay for each *regulated mortgage contract* that it enters into and each further advance that it provides on a *regulated mortgage*

***contract.*** The record must be retained for a year from the date at which the *regulated mortgage contract* is entered into or the further advance is provided.

#### Self-certification of income

- 11.3.2 R In taking account of a *customer's* ability to repay a loan for the purposes of *MCOB 11.3.1R(1)*, a *firm* may rely upon self-certification of income by the *customer* in circumstances where the *firm* considers it to be appropriate, having regard to the interests of the *customer*, and where the *firm* has no reasonable grounds for doubting the information provided.
- 11.3.3 G (1) Examples of the circumstances where the *firm* may consider self-certification of income to be appropriate for the purposes of *MCOB 11.3.2R* include:
- (a) where the *customer* is an existing *customer* of the *firm*, with an established and good payment history;
  - (b) where proof of income is not readily available by virtue of the nature of the *customer's* employment, the basis of their remuneration, or the sources of their income; or
  - (c) where the *customer* has a deadline for entering into the *regulated mortgage contract* (for example, in an auction sale) and therefore there is insufficient time for the *firm* to complete its usual enquiries.
- (2) The examples in (1) are not exhaustive. There may be other circumstances in which a *firm* may consider self-certification to be appropriate. It will depend on the circumstances of each case. However, in considering whether self-certification is appropriate, a *firm* should have regard to its responsibilities to its *customers* and, in particular, should guard against taking any action that would be contrary to *Principle 6* and in breach of *MCOB 11.3.1R* and *MCOB 11.3.2R*.

#### Responsible lending policy

- 11.3.4 R (1) A *firm* must put in place, and operate in accordance with, a written policy setting out the factors it will take into account in assessing a *customer's* ability to repay.
- (2) A *firm* must make and keep up-to-date an adequate record of the policy in (1). When the policy is changed, a record of the previous policy must be retained for a year from the date of change.
- 11.3.5 G (1) In determining the written policy in accordance with *MCOB 11.3.4R(1)*, a *firm* should assume (in the absence of evidence to the contrary) that any regular payments under a *regulated*

*mortgage contract* will be met from the *customer's* income. A *firm* should therefore take account of the *customer's* actual or reasonably anticipated income, or both, in reaching a decision on whether to enter into a *regulated mortgage contract* with that *customer* or make a further advance.

- (2) Other factors that the *FSA* would expect to be considered by a *firm* in taking account of the *customer's* ability to repay include:
  - (a) the level of both initial and subsequent repayments, where known (including, for *interest-only mortgages*, the cost of any associated *repayment vehicle*). This means, for example, that where the mortgage cost is significantly discounted for the initial period of a *regulated mortgage contract*, a *mortgage lender* should also consider the level of repayments the *customer* is expected to make at the end of that period, based on interest rates applicable at the time the *mortgage lender* is considering whether to enter into the *regulated mortgage contract* or make a further advance; and
  - (b) whether the *customer* has the ability to, and intends to, repay, either wholly or partly, from resources other than income. Such resources could include the realisation of *investments*, or the planned sale of the mortgaged property as in the case of a *regulated lifetime mortgage contract*.

- 11.3.6 G Where the *regulated mortgage contract* is an *interest-only mortgage*, and the *firm* is unable to establish the cost of the associated *repayment vehicle*, the repayments described in *MCOB* 11.3.5G(2)(a) may be based on an equivalent *repayment mortgage*.
- 11.3.7 G Where *MCOB* 11.3.5G(2)(b) applies, the *firm* should be able to demonstrate the *customer's* intention to repay (for example, by reference to information given by the *customer* on an application form or to correspondence with the *customer*).
- 11.3.8 G The record maintained in accordance with *MCOB* 11.3.1R(2) should include or provide reference to matters such as:
- (1) what checks, if any, the *firm* has carried out, regarding the *customer's* ability to repay; or
  - (2) evidence that demonstrates the *customer's* ability and intention to repay the loan, from resources other than income.

## 12 CHARGES

### 12.1 Application

#### Who?

12.1.1 R This chapter applies to a *firm* in a category listed in column (1) of the table in *MCOB 12.1.2R* in accordance with column (2) of that table.

12.1.2 R Table

(1) Category of firm	(2) Applicable section
<i>mortgage lender</i>	whole chapter
<i>mortgage adviser</i> <i>mortgage arranger</i>	<i>MCOB 12.1,</i> <i>MCOB 12.2 and</i> <i>MCOB 12.5.2R</i>
<i>mortgage administrator</i> <i>a firm that was a mortgage lender or mortgage administrator before the sale of a repossessed property</i>	<i>MCOB 12.1, MCOB 12.2,</i> <i>MCOB 12.4 and 12.5.2R</i>

#### What?

12.1.3 R This chapter applies where a *firm*:

- (1) *enters into, or makes a further advance on, a regulated mortgage contract; or*
- (2) *administers a regulated mortgage contract; or*
- (3) *arranges or advises on a regulated mortgage contract or a variation to the terms of a regulated mortgage contract.*

12.1.4 R The requirements in *MCOB 12.4* (Arrears charges) and *MCOB 12.5* (Excessive charges) will continue to apply to a *firm* after a *regulated mortgage contract* has come to an end following the sale of a *repossessed property*. References in this chapter to ‘*customer*’ will include references to a former *customer* as appropriate.

12.1.5 G The *FSA* will expect a *firm* to ensure that charges made to a *customer* arising from the sale of a *repossessed property* and charges arising in relation to a *mortgage shortfall debt* are not excessive and are subject to the same considerations as apply with respect to *arrears* charges under this chapter.

## 12.2 Purpose

- 12.2.1 G (1) *Principle 6* requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. A *firm* is also under an obligation, as a consequence of *MCOB 5* (Pre-application disclosure), *MCOB 6* (Disclosure at the offer stage), *MCOB 7* (Disclosure at start of contract and after sale) and *MCOB 9* (Lifetime mortgages: product disclosure), to make charges transparent to *customers*. This chapter reinforces these requirements by preventing a *firm* from imposing unfair and excessive charges.
- (2) The level of charges under a *regulated mortgage contract* is not typically a matter for regulation. However, in certain limited circumstances, the *FSA* believes that *customers* should be protected from unfair and excessive charging practices. This chapter considers four specific circumstances, where:
- (a) the charges imposed upon a *customer* seeking to terminate a *regulated mortgage contract* before the end of the term of the contract do not reflect the cost of termination to the *firm*;
  - (b) the charges imposed on a *customer* in payment difficulties are not based upon the costs incurred by the *firm*;
  - (c) the charges (including rates of interest) imposed on a *customer* under a *regulated mortgage contract* are excessive and contrary to the *customer's* interests; and
  - (d) the charges made to a *customer* in connection with a *firm entering into* or making a further advance on a *regulated mortgage contract* or *administering a regulated mortgage contract*, or *arranging or advising on a regulated mortgage contract* or a variation to the terms of a *regulated mortgage contract* are excessive.

## 12.3 Early repayment charges

### Early repayment charges to be expressed as cash and to be reasonable

- 12.3.1 R A *firm* must ensure that any *regulated mortgage contract* that it *enters into* does not impose, and cannot be used to impose, an *early repayment charge* other than one that is:

- (1) able to be expressed as a cash value; and



- (2) a reasonable pre-estimate of the costs as a result of the *customer* repaying the amount due under the *regulated mortgage contract* before the contract has terminated.

12.3.2 G A *firm* can choose the method it employs for calculating *early repayment charges* in accordance with MCOB 12.3.1R. A *firm* should not use the ‘Rule of 78’ (as contained in Schedule 2 of the Consumer Credit (Rebate on Early Settlement) Regulations 1983), which is not appropriate as it effectively overstates the cost to the *mortgage lender*.

12.3.3 G A *firm* may calculate the same level of *early repayment charge* for all *regulated mortgage contracts* of a similar type (for example a tranche of *regulated mortgage contracts* offering a particular fixed rate of interest), rather than on the basis of the individual *regulated mortgage contract* with the particular *customer*.

#### Early repayment charges to be disclosed in illustrations

12.3.4 R Before:

- (1) *entering into a regulated mortgage contract with a customer;*  
or
- (2) *making a further advance on an existing regulated mortgage contract;* or
- (3) *changing all or part of a regulated mortgage contract from one type of interest rate to another;*

a *firm* must disclose to the *customer*:

- (a) in the *illustration* provided in accordance with MCOB 5, MCOB 7.6.7R, 7.6.18R, 7.6.22R, 7.6.31R, or MCOB 9; and
- (b) in the *illustration* provided as part of the *offer document* in accordance with MCOB 6.4.1R(1) and MCOB 9.5;

the maximum amount payable as an *early repayment charge* in respect of that *regulated mortgage contract*, if an *early repayment charge* applies.

12.4 Arrears charges

12.4.1 R (1) A *firm* must ensure that any *regulated mortgage contract* that it *enters into* does not impose, and cannot be used to impose, a charge for *arrears* on a *customer* except

where that charge is a reasonable estimate of the cost of the as a result of the individual rules above, additional administration required as a result of the *customer* being in *arrears*.

(2) Paragraph (1) does not prevent a *firm* from *entering into a regulated mortgage contract* with a *customer* under which the *firm* may change the rate of interest charged to the *customer* from a fixed or discounted rate of interest to the *firm's* standard variable rate if the *customer* goes into *arrears*, providing that this standard variable rate is not a rate created especially for *customers* in *arrears*.

- 12.4.2 G A *firm* may calculate the same level of *arrears* charges for all *regulated mortgage contracts* where the *customer* is in *arrears*, rather than on the basis of the individual *regulated mortgage contract* with the particular *customer*.
- 12.4.3 G *Firms* are also subject to requirements on information provision and standards relating to *arrears* and *repossessions* (see *MCOB* 13 (*Arrears and repossessions*)).
- 12.5 Excessive charges
- 12.5.1 R A *firm* must ensure that any *regulated mortgage contract* that it *enters into* does not impose, and cannot be used to impose, excessive charges upon a *customer*.
- 12.5.2 R A *firm* must ensure that its charges to a *customer* in connection with the *firm entering into* or making a further advance on a *regulated mortgage contract* or *administering a regulated mortgage contract* or *arranging or advising on a regulated mortgage contract* or a variation to the terms of a *regulated mortgage contract* are not excessive.
- 12.5.3 G When determining whether a charge is excessive, a *firm* should consider:
- (1) the amount of its charges for the services or products in question compared with charges for similar products or services on the market;
  - (2) the degree to which the charges are an abuse of the trust that the *customer* has placed in the *firm*; and
  - (3) the nature and extent of the disclosure of the charges to the *customer*.
- 12.5.4 G *Firms* are also subject to requirements relating to responsible lending (see *MCOB* 11).

## 12.6

### **Business loans**

- 12.6.1 G *Firms* are reminded that, in relation to a *regulated mortgage contract* for a business purpose in circumstances where *MCOB 7.7.1R* applies, if there is a new *early repayment charge* or a change to the existing *early repayment charge*, *MCOB 7.7.1R(2)* requires a *firm* to notify the *customer* within five *business days* of the maximum amount payable as an *early repayment charge*.

### 13 ARREARS AND REPOSSESSIONS

**13.1 Application**

**Who?**

**13.1.1 R** This chapter applies to a *firm* in a category listed in column (1) of the table in *MCOB 13.1.2R* in accordance with column (2) of that table.

**13.1.2 R** Table

This table belongs to *MCOB 13.1.1R*

(1) Category of firm	(2) Applicable section
<i>mortgage lender, and a firm that was a mortgage lender before the sale of a repossessed property</i>	<i>MCOB 13.1-13.3 , except for 13.3.9R and 13.3.10G</i>
<i>mortgage administrator, and a firm that was a mortgage administrator before the sale of a repossessed property</i>	whole chapter

**What?**

**13.1.3 R** This chapter applies with respect to *administering a regulated mortgage contract* and *administering a mortgage shortfall debt*.

**13.1.4 R** The requirements in *MCOB 13* will continue to apply to a *firm* after a *regulated mortgage contract* has come to an end following the sale of a *repossessed property*. References in this chapter to “*customer*” will include references to a former *customer* as appropriate.

**13.1.5 G** The *FSA* expects a *firm* to treat a *mortgage shortfall debt* in the same way that it treats a payment shortfall.

**13.1.6 G** A *firm* may have entered into a mix of *regulated mortgage contracts* and *non-regulated mortgage contracts* with a *customer* secured on the same property. In such circumstances, if the *regulated mortgage contract* is in *arrears*, notwithstanding that the overall position in respect of the mortgages generally is not in *arrears*, the *firm* will need to comply with all the requirements of *MCOB 13* in respect to the *regulated mortgage contract*. Where this involves providing the *customer* with information, a *firm* should explain, if it is the case, that whilst the overall position on the mortgages is not in *arrears*, no action will be taken in respect of the *regulated mortgage contract*.

13.1.7 G If a *firm* has entered into more than one *regulated mortgage contract* with the same *customer* secured on the same property, the *firm* may treat all of the *regulated mortgage contracts* as one for the purposes of MCOB 13.

## 13.2 Purpose

13.2.1 G *Principle 6* requires a *firm* to pay due regard to the interests of *customers* and treat them fairly. This chapter amplifies this principle in respect of the information and service provided to *customers* who have payment difficulties or face a *mortgage shortfall debt*.

13.2.2 G There may be occasions where a *customer* enters into a *regulated mortgage contract* with no intention of meeting his payment obligations. Where the intention is to defraud, this chapter does not prevent early action to recover the debt.

## 13.3 Dealing fairly with customers in arrears: policy and procedures

- 13.3.1 R (1) A *firm* must deal fairly with any *customer* who:
- (a) is in *arrears* on a *regulated mortgage contract*; or
  - (b) has a *mortgage shortfall debt*.
- (2) A *firm* must put in place, and operate in accordance with, a written policy (agreed by its respective *governing body*) and procedures for complying with (1).

### Policy and procedures: content

- 13.3.2 E (1) A *firm* should ensure that its written policy and procedures include:
- (a) using reasonable efforts to reach an agreement with a *customer* over the method of repaying any payment shortfall or *mortgage shortfall debt*, in the case of the former having regard to the desirability of agreeing with the *customer* an alternative to taking possession of the property;
  - (b) liaising, if the *customer* makes arrangements for this, with a third party source of advice regarding the payment shortfall or *mortgage shortfall debt*;
  - (c) adopting a reasonable approach to the time over which the payment shortfall or *mortgage shortfall debt* should be repaid, having particular regard to the need to establish, where feasible, a payment plan which is practical in terms of the circumstances of the *customer*;

(d) **granting, unless it has good reason not to do so, a *customer's* request for a change to:**

(i) **the date on which the payment is due (providing it is within the same payment period); or**

(ii) **the method by which payment is made;**

**and giving the *customer* a written explanation of its reasons if it refuses the request;**

(e) **giving consideration, where no reasonable payment arrangement can be made, to the *customer* being allowed to remain in possession to effect a sale; and**

(f) ***repossessing* the property only where all other reasonable attempts to resolve the position have failed.**

(2) **Contravention of *MCOB* 13.3.2E(1) may be relied on as tending to show contravention of *MCOB* 13.3.1R(2).**

13.3.3 G The requirement in *MCOB* 13.3.1R(2) for a written policy and procedures is intended to ensure that a *firm* has addressed the need for internal systems to deal fairly with any *customer* in financial difficulties. *MCOB* 13.3.1R(2) does not oblige a *firm* to provide *customers* with a copy of the written policy and procedures. Nor, however, does it prevent a *firm* from providing *customers* with either these documents or a more *customer*-orientated version.

13.3.4 G In relation to *MCOB* 13.3.2E(1)(a), *customers*:

(1) should be given a reasonable period of time to consider any proposals for payment that are put to them; in addition, and depending on the individual circumstances, a *firm* may wish to do one or more of the following with the agreement of the *customer*:

(a) extend the term of the *regulated mortgage contract*; or

(b) change the type of the *regulated mortgage contract*; or

(c) defer payment of interest due on the *regulated mortgage contract* or *mortgage shortfall debt*; or

(d) treat the payment shortfall as if it was part of the original amount borrowed;

(2) should be given adequate information to understand the implications of any proposed arrangement; one approach may

be to provide information on the new terms in line with the requirements for annual statements (see *MCOB 7.5.3R*).

- 13.3.5 G *MCOB 13.3.2E(1)(a)* means that a *firm* should not automatically capitalise *arrears*.
- 13.3.6 G In relation to *MCOB 13.3.2E(1)(c)*, the *FSA* takes the view that the determination of a reasonable repayment period will depend upon the individual circumstances. In appropriate cases this will mean that repayments are arranged over the remaining term of the *regulated mortgage contract*.
- 13.3.7 G In relation to *MCOB 13.3.2E(1)(d)*, a term in a *regulated mortgage contract* that purported to allow a *firm* to change the payment date unilaterally might in any event contravene the *Unfair Terms Regulations*.
- 13.3.8 G *Firms* that propose to outsource aspects of *customer* relationships (including debt collection) should note that, as set out in *SYSC 3.2.4G(1)*, the *FSA* will continue to hold them responsible for the way in which this work is carried on.

#### **Record keeping: arrears and repossessions**

- 13.3.9 R (1) **A *firm* must make and retain an adequate record of its dealings with a *customer* whose account is in *arrears* or who has a *mortgage shortfall debt*, which will enable the *firm* to show its compliance with *MCOB 13.4* (Arrears: provision of information to the customer), *MCOB 13.5* (Dealing with a customer in arrears or with a mortgage shortfall debt) and *MCOB 13.6* (Repossessions).**
- (2) **A *firm* must retain the record required by (1) for a year from the date on which the relevant payment shortfall or mortgage shortfall debt was cleared.**
- 13.3.10 G The record referred to in *MCOB 13.3.9R* should contain, or provide reference to, matters such as:
- (1) the date of first communication with the *customer* after the account was identified as being in *arrears*;
  - (2) in relation to correspondence issued to a *customer* in *arrears*, the name and contact number of the employee dealing with that correspondence, where known;
  - (3) the basis for issuing tailored information in accordance with *MCOB 13.7.1R*;
  - (4) information relating to any new payment arrangements proposed;

- (5) the date of issue of any legal documents;
  - (6) the arrangements made for sale after the *repossession* (whether legal or voluntary); and
  - (7) the date of any communication summarising the *customer's* outstanding debt after sale of the *repossessed* property.
- 13.3.11 G For details of the standard expected of *firms* in relation to maintaining records, see *MCOB 2.8* (Record keeping)
- 13.4 Arrears: provision of information to the customer**
- 13.4.1 R **If a *customer* falls into *arrears* on a *regulated mortgage contract*, a *firm* must as soon as possible, and in any event within 15 *business days* of becoming aware of that fact, provide the *customer* with the following in a *durable medium*:**
- (1) the current *FSA* information sheet on mortgage arrears;
  - (2) a list of the due payments either missed or only paid in part;
  - (3) the total sum of the payment shortfall;
  - (4) the charges incurred as a result of the payment shortfall;
  - (5) the total outstanding debt, excluding charges that may be added on redemption; and
  - (6) an indication of the nature (and where possible the level) of charges the *customer* is likely to incur unless the payment shortfall is cleared.
- 13.4.2 G (1) The current *FSA* information sheet on mortgage arrears is available on the *FSA* website, [www.fsa.gov.uk](http://www.fsa.gov.uk); copies can also be obtained from the *FSA*.
- (2) In the event of the *FSA* making any changes to the information sheet, at least three months' notice of the changes will be given on the *FSA* website.
- 13.4.3 G (1) A *firm* may provide the information in *MCOB 13.4.1R*(2), (3), (4), (5) and (6) orally, for example, by telephone, but must provide the information in a *durable medium* with a copy of the *FSA* information sheet on mortgage arrears within 15 *business days* of becoming aware of the *customer's* account falling into *arrears*.
- (2) Where a *firm* provides the information in *MCOB 13.4.1R* when a payment shortfall occurs but before the *customer's* account falls into *arrears*, it need not repeat the provision of the



information in *MCOB* 13.4.1R when the *customer's* account falls into *arrears*.

#### Customers in arrears within the past 12 months

- 13.4.4 R If a *customer's* account has previously fallen into *arrears* within the past 12 months (and at that time the *customer* received the disclosure required by *MCOB* 13.4.1R), the *arrears* have been cleared and the *customer's* account falls into *arrears* on a subsequent occasion a *firm* must either:
- (1) issue a further disclosure in compliance with *MCOB* 13.4.1R; or
  - (2) provide a statement, in a *durable medium*, of the payments due, the actual payment shortfall, any charges incurred and the total outstanding debt excluding any charges that may be added on redemption, together with information as to the consequences, including *repossession*, if the payment shortfall is not cleared.

#### Steps required before action for repossession

- 13.4.5 R Before commencing action for *repossession*, a *firm* must:
- (1) provide a written update of the information required by *MCOB* 13.4.1R(2), (3), (4), (5) and (6);
  - (2) ensure that the *customer* is informed of the need to contact the local authority to establish whether the *customer* is eligible for local authority housing after his property is *repossessed*; and
  - (3) clearly state the action that will be taken with regard to *repossession*.

#### 13.5 Dealing with a customer in arrears or with a mortgage shortfall debt

##### Statements of charges

- 13.5.1 R Where an account is in *arrears*, and the payment shortfall or *mortgage shortfall debt* is attracting charges, a *firm* must provide the *customer* with a regular written statement (at least once a quarter) of the payments due, the actual payment shortfall, the charges incurred and the debt.
- 13.5.2 G (1) For the purpose of *MCOB* 13.5.1R, charges that trigger the requirement for regular statements include all charges and fees levied directly as a result of the account falling into *arrears*. This includes charges such as monthly administrative charges, legal fees and interest. If interest is applied to the amount of the

*arrears*, as it is applied to the rest of the mortgage, a *firm* need not send a written statement, unless other charges are also being made. If interest is applied to the amount of the *arrears* in a different manner to the rest of the mortgage then a written statement will be required.

- (2) In determining the frequency for providing statements in accordance with *MCOB* 13.5.1R, a *firm* should have regard to the application of new charges and the number of transactions on the *customer's* account.
- (3) If an account in *arrears* is subject to a payment plan agreed between a *firm* and a *customer*, and the account is operating in accordance with that plan, the *firm* will still need to send the *customer* a written statement in accordance with *MCOB* 13.5.1R if the payment shortfall or *mortgage shortfall debt* is attracting charges.
- (4) Information provided should cover the period since the last statement. *Firms* may use the annual statement to comply with *MCOB* 13.5.1R, in which case the annual statement will need to be supplemented to include the actual payment shortfall.

#### **Pressure on customers**

- 13.5.3      **R**      **A *firm* must not put pressure on a *customer* through excessive telephone calls or correspondence, or by contact at an unreasonable hour.**
- 13.5.4      G      In *MCOB* 13.5.3R, a reasonable hour will usually fall between 8am and 9pm. *Firms* should also have regard to the circumstances of the *customer* and any knowledge they have of the *customer's* work pattern or religious faith which might make it unreasonable to contact the *customer* during these hours.
- 13.5.5      G      In *MCOB* 13.5.3R, putting pressure on a *customer* includes:
- (1) the use of documents which resemble a court summons or other official document, or are intended to lead the *customer* to believe that they come from or have the authority of a court (which might in any event constitute a criminal offence under the County Courts Act 1984 or section 40 of The Administration of Justice Act 1970); and
  - (2) the use of documents containing unfair, unclear or misleading information intended to coerce the *customer* into paying. A *firm* should also have regard to Section 1 of the Malicious Communications Act 1988 which establishes a criminal offence in respect of letters sent which convey a threat or false information with intent to cause distress or anxiety.

13.5.6 G In relation to *MCOB* 13.5.3R, a *firm* should also have regard to the general law, including the Data Protection Act 1998, on the disclosure of information to third parties.

## 13.6 Repossessions

### Marketing a repossessed property

13.6.1 R A *firm* must ensure that, whenever a property is *repossessed* (whether voluntarily or through legal action) and it administers the *regulated mortgage contract* in respect of that property, steps are taken to:

- (1) market the property for sale as soon as possible; and
- (2) obtain the best price that might reasonably be paid, taking account of factors such as market conditions as well as the continuing increase in the amount owed by the *customer* under the *regulated mortgage contract*.

13.6.2 G In *MCOB* 13.6.1R it is recognised that a balance has to be struck between the need to sell the property as soon as possible, to reduce or remove the outstanding debt, and other factors which may prompt the delay of the sale. These might include market conditions (explicitly referred to in *MCOB* 13.6.1R(2)) but there may be other legitimate reasons for deferring action. This could include the expiry of a period when a grant is repayable on re-sale, or the discovery of a title defect that needs to be remedied if the optimal selling price is to be achieved.

### If the proceeds of sale are less than the debt

13.6.3 R A *firm* must ensure that, as soon as possible after the sale of a *repossessed* property, if the proceeds of sale are less than the amount of the *customer's* debt, the *customer* is informed in a *durable medium* of:

- (1) the *mortgage shortfall debt*; and
- (2) where relevant, the fact that the *mortgage shortfall debt* may be pursued by another company (for example, a mortgage indemnity insurer).

13.6.4 R (1) If the decision is made to recover the *mortgage shortfall debt*, the *firm* must ensure that the *customer* is notified of this intention.

(2) The notification referred to in (1) must take place within five years of the date of the sale (if the *regulated mortgage contract* is subject to Scottish law) or within six years (in all other cases).

13.6.5 G *MCOB 13.6.4R* does not require a *firm* to recover a *mortgage shortfall debt*. A *firm* may not wish to recover the *mortgage shortfall debt* in some situations, for example where the sums involved make action for recovery unviable.

**If the proceeds of sale are more than the debt**

13.6.6 R A *firm* must ensure that, on the sale of a *repossessed* property, if the proceeds of sale are more than the amount of the *customer's* debt, reasonable steps are taken, as soon as possible after the sale, to inform the *customer* in a *durable medium* of the surplus and, subject to the rights of any subsequent mortgage or charge holders, to pay it to him.

13.7 Business loans

13.7.1 Where the *regulated mortgage contract* is for a business purpose, a *firm* may as an alternative to *MCOB 13.4.1R(1)* provide the following information in a *durable medium* instead of the *FSA* information sheet on mortgage arrears:

- (a) details of the consequences if the payment shortfall is not cleared;
- (b) a description of the options available to the *customer* for clearing the payment shortfall; and
- (c) details of sources of fee-free advice for business *customers*.

Mortgages: Conduct of Business

Schedule 1

Record keeping requirements

G

- 1 The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant record keeping requirements.
- 2 It is not a complete statement of those requirements and should not be relied on as if it were.
- 3 Table

<b>Handbook reference</b>	<b>Subject of record</b>	<b>Contents of record</b>	<b>When record must be made</b>	<b>Retention period</b>
<b>MCOB 3.10.1R</b>	<b>Each <i>non-real time financial promotion</i></b>	<b>Name of individual who confirmed compliance or approved the <i>financial promotion</i>, and the date of confirmation</b>	<b>Date of confirmation or approval</b>	<b>One year from the date on which the <i>promotion</i> was last <i>communicated</i></b>
<b>MCOB 3.10.2G(2) to (5)</b>	<b>Each <i>non-real time financial promotion</i></b>	<b>Details of: the medium for which the <i>qualifying credit promotion</i> was authorised; evidence supporting a material factual statement; evidence to show that any typical APR was representative of business</b>	<b>Date of confirmation or approval</b>	<b>One year from the date on which the <i>promotion</i> was last <i>communicated</i></b>
<b>MCOB 3.10.3G(1)</b>	<b>Each <i>non-real time financial promotion</i></b>	<b>A copy of the <i>qualifying credit promotion</i> as finally published</b>	<b>Date of confirmation or approval</b>	<b>One year from the date on which the <i>promotion</i> was last <i>communicated</i></b>

<b>Handbook reference</b>	<b>Subject of record</b>	<b>Contents of record</b>	<b>When record must be made</b>	<b>Retention period</b>
<i>MCOB 4.7.17R(1)(a)</i>	Suitability	Details of the customer information obtained, including the <i>customer's</i> needs and circumstances, for the purpose of assessing the suitability of a <i>regulated mortgage contract</i>	When the personal recommendation is made	Three years
<i>MCOB 4.7.17R(1)(b)</i>	Suitability	An explanation of the reasons why the <i>firm</i> believes the personal recommendation complies with suitability requirements in <i>MCOB 4.5.4R(1)</i>	When the personal recommendation is made	Three years
<i>MCOB 4.7.17R(1)(b)</i>	Suitability	An explanation of the reasons why a personal recommendation has been made on a basis other than that described in <i>MCOB 4.5.13E(1)</i>	When the personal recommendation is made	Three years
<i>MCOB 4.8.7R</i>	Scripted questions	A record of the scripted questions used in non-advised sales	The date on which the scripted questions are first used	One year from the date on which the scripted questions are superseded by a more up-to-date record
<i>MCOB 4.6.12R</i>	Notice of cancellation	A record of the fact that notice has been given (including the original notice instructions and a copy of any receipt of notice issued)	When the <i>firm</i> first becomes aware that notice has been served	Three years

<b>Handbook reference</b>	<b>Subject of record</b>	<b>Contents of record</b>	<b>When record must be made</b>	<b>Retention period</b>
<b>MCOB 5.4.19R</b>	Each <i>illustration</i> a <i>firm</i> issues to a <i>customer</i> where the <i>customer</i> applies for that particular <i>regulated mortgage contract</i>	The Key facts illustrations (KFI) issued	The date the <i>customer</i> applies for the particular <i>regulated mortgage contract</i>	One year
<b>MCOB 5.4.21G</b>	Each KFI retained	Detail of: the date the KFI was issued; the date on which the <i>customer</i> applied for the <i>regulated mortgage contract</i> ; and the medium through which the KFI was issued	The date the <i>customer</i> applies for the particular <i>regulated mortgage contract</i>	One year
<b>MCOB 6.4.2R(1)</b>	<i>Offer document</i>	Each <i>offer document</i> issued to the <i>customer</i>	The date on which the <i>firm</i> issues the <i>offer document</i> to the <i>customer</i>	One year
<b>MCOB 6.4.2R(2)</b>	Tariff of charges	A copy of the tariff of charges issued with, or as part of the <i>offer document</i>	The date on which the <i>firm</i> issues the tariff of charges to the <i>customer</i>	One year
<b>MCOB 6.4.2R(2)</b>	Supplemental information relating to <i>mortgage credit cards</i>	Information explaining that rights associated with a traditional credit card do not apply,	The date on which the <i>firm</i> issues the information to the <i>customer</i>	One year

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<p><b>MCOB 7.4.2R</b></p>	<p>Start of contract disclosure</p>	<p>The amount of the first and subsequent payments; the date and method of collection of the first and subsequent payments; details of insurance products and any repayment vehicle purchased through the <i>firm</i>, of the first premium payable and whether this is to be collected with the mortgage payment; detail of the repayment method, and if interest only a reminder to the <i>customer</i> to maintain a suitable repayment vehicle; what to do if the account falls into <i>arrears</i>; information about linked borrowing or savings available and whether or not overpayments or underpayments are permitted.</p>	<p>The date on which the firm issues the information to the customer</p>	<p>One year</p>



<b>Handbook reference</b>	<b>Subject of record</b>	<b>Contents of record</b>	<b>When record must be made</b>	<b>Retention period</b>
<b>MCOB 7.6.34R</b>	<b>Illustrations required on event-driven changes to the contract</b>	<b>A copy of the <i>illustration</i> issued for further advances requiring authorisation; rate switches and the removal or addition of a party to the contract</b>	<b>When the <i>illustration</i> is issued</b>	<b>One year</b>
<b>MCOB 8.5.22R(1)(a)</b>	<b>Suitability</b>	<b>Details of the customer information obtained, including the <i>customer's</i> needs and circumstances, for the purpose of assessing the suitability of a <i>regulated lifetime mortgage contract</i></b>	<b>When the personal recommendation is made</b>	<b>Three years</b>
<b>MCOB 8.5.22R(1)(b)</b>	<b>Suitability</b>	<b>An explanation of the reasons why the <i>firm</i> believes the personal recommendation complies with suitability requirements in MCOB 8.5.4R(1)</b>	<b>When the personal recommendation is made</b>	<b>Three years</b>
<b>MCOB 8.5.22R(1)(b)</b>	<b>Suitability</b>	<b>An explanation of the reasons why a personal recommendation has been made on a basis other than that described in <i>MCOB 8.5.17E(1)</i></b>	<b>When the personal recommendation is made</b>	<b>Three years</b>

<b>Handbook reference</b>	<b>Subject of record</b>	<b>Contents of record</b>	<b>When record must be made</b>	<b>Retention period</b>
<i>MCOB 8.3.1R(1)</i>	Scripted questions	A record of the scripted questions used in non-advised sales	The date on which the scripted questions are first used	One year from the date on which the scripted questions are superseded by a more up-to-date record
<i>MCOB 8.3.1R(1)</i>	Notice of cancellation	A record of the fact that notice has been given (including the original notice instructions and a copy of any receipt of notice issued)	When the <i>firm</i> first becomes aware that notice has been served	Three years
<i>MCOB 9.3.1R</i>	Each <i>illustration</i> a <i>firm</i> issues to a <i>customer</i> where the <i>customer</i> applies for that particular <i>regulated lifetime mortgage contract</i>	The Key facts illustrations (KFI) issued	The date the <i>customer</i> applies for the particular <i>regulated lifetime mortgage contract</i>	One year
<i>MCOB 9.3.1R</i>	Each KFI retained	Detail of: the date the KFI was issued; the date on which the <i>customer</i> applied for the <i>regulated lifetime mortgage contract</i> ; and the medium through which the KFI was issued	The date the <i>customer</i> applies for the particular <i>regulated lifetime mortgage contract</i>	One year
<i>MCOB 9.5.2R</i>	<i>Offer document</i>	Each <i>offer document</i> issued to the <i>customer</i>	The date on which the <i>firm</i> issues the <i>offer document</i> to the <i>customer</i>	One year

<b>Handbook reference</b>	<b>Subject of record</b>	<b>Contents of record</b>	<b>When record must be made</b>	<b>Retention period</b>
<i>MCOB 9.5.2R</i>	Tariff of charges	A copy of the tariff of charges issued with, or as part of the offer document	The date on which the <i>firm</i> issues the tariff of charges to the <i>customer</i>	One year
<i>MCOB 9.5.2R</i>	Supplemental information relating to <i>mortgage credit cards</i>	Information explaining that rights associated with a traditional credit card do not apply	The date on which the firm issues the information to the <i>customer</i>	One year

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
MCOB 9.7.10R	Start of contract disclosure where interest payments are required	The amount of the first and subsequent payments; the date, frequency and method of collection of the first and subsequent payments; the net amount the <i>customer</i> will receive where interest is deducted from income and the method by which this will be paid; details of insurance products purchased through the <i>firm</i> , of the first premium payable and whether this is to be collected with the mortgage payment; confirmation that the <i>regulated lifetime mortgage contract</i> is on an interest-only basis and details of how the firm expects the capital to be repaid; what to do if the account falls into <i>arrears</i> ; information about linked borrowing or savings available and whether or not overpayments or underpayments are permitted.	The date on which the <i>firm</i> issues the information to the customer	One year

<b>Handbook reference</b>	<b>Subject of record</b>	<b>Contents of record</b>	<b>When record must be made</b>	<b>Retention period</b>
<b>MCOB 9.6.1R</b>	<b>Illustrations required on event-driven changes to the contract</b>	<b>A copy of the illustration issued for further advances requiring authorisation; rate switches and the removal or addition of a party to the contract</b>	<b>When the <i>illustration</i> is issued</b>	<b>One year</b>
<b>MCOB 9.7.10R</b>	<b>Start of contract disclosure for a drawdown mortgage with fixed payments to the <i>customer</i></b>	<b>The amount of the first and subsequent payments; the date of issue and method of the payment of the first and subsequent payments; details of insurance products purchased through the <i>firm</i>, and of the first and subsequent premiums and the method and date of collection; details of how the firm expects the capital and interest to be paid; information about linked borrowing or savings available and whether or not repayments are permitted</b>	<b>The date on which the firm issues the information to the customer</b>	<b>One year</b>

<b>Handbook reference</b>	<b>Subject of record</b>	<b>Contents of record</b>	<b>When record must be made</b>	<b>Retention period</b>
<i>MCOB 9.7.10R</i>	Start of contract disclosure for a drawdown mortgage without fixed payments to the <i>customer</i>	Where the <i>customer</i> can choose the frequency of the payment, details of the limitations on frequency and amount of payments; where payments can vary for any other reasons, details of the amount of the first payment and how subsequent payments can vary; the method by which payments will be made; details of insurance products purchased through the <i>firm</i> , and of the first and subsequent premiums and the method and date of collection; details of how the firm expects the capital and interest to be paid; information about linked borrowing or savings available and whether or not repayments are permitted	The date on which the <i>firm</i> issues the information to the <i>customer</i>	One year

<b>Handbook reference</b>	<b>Subject of record</b>	<b>Contents of record</b>	<b>When record must be made</b>	<b>Retention period</b>
<b>MCOB 9.7.10R</b>	Start of contract disclosure where a lump sum payment to the <i>customer</i> is made and interest is rolled up	Confirmation if appropriate that no payments are required and details of how the <i>firm</i> expect capital and interest to be paid; if payments are to be made, the amount, frequency and method of collection of the first and subsequent payments; what to do in the case of arrears; details of insurance products purchased through the <i>firm</i> , and of the first and subsequent premiums and the method and date of collection; details of how the <i>firm</i> expects the capital and interest to be paid; information about linked borrowing or savings available and whether or not repayments are permitted	The date on which the firm issues the information to the customer	One year
<b>MCOB 11.3.1R(2)</b>	Ability of the <i>customer</i> to repay <i>advance</i>	Evidence to demonstrate that the <i>firm</i> has taken into account the <i>customer's</i> ability to repay	When the assessment of the <i>customers</i> ability to repay is made	One year from the date on which the <i>regulated mortgage contract</i> is entered into, or the further advance provided

<b>Handbook reference</b>	<b>Subject of record</b>	<b>Contents of record</b>	<b>When record must be made</b>	<b>Retention period</b>
<i>MCOB 11.3.4R(2)</i>	Responsible lending policy	A record of the <i>firm's</i> written policy setting out the factors the <i>firm</i> will take into account in assessing the <i>customer's</i> ability to repay	The date on which the policy is set	One year from the date on which the policy is replaced
<i>MCOB 13.3.9</i>	Dealings with <i>customers in arrears</i> or with a <i>mortgage shortfall debt</i>	Details of all <i>communication</i> with the <i>customer</i> ; information relating to any repayment plan; date of issue of any legal proceedings; arrangements made for sale of a <i>repossessed</i> property; and the basis of any tailored information where the loan is for a business purpose.	The date on which the <i>customer's</i> account first falls into <i>arrears</i>	One year from the date on which the relevant payment shortfall or <i>mortgage shortfall debt</i> is cleared



Mortgages: Conduct of Business

Schedule 2

Notification requirements

G

- 1 There are no notification requirements in *MCOB*.

Mortgages: Conduct of Business

Schedule 3

Fees and other required payments

G

- 1 There are no requirements for fees or other payments in *MCOB*.

Mortgages: Conduct of Business

Schedule 4

Powers exercised

G

1 Table Powers exercised

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *MCOB*:

section 138 (General rule-making power)

section 139 (Miscellaneous ancillary matters)

section 145 (Financial promotion rules)

section 149 (Evidential provisions)

section 156 (General supplementary powers)

The following powers in the *Act* have been exercised by the *FSA* to give the *guidance* in *MCOB*:

section 157(1) (Guidance)

Mortgages: Conduct of Business

Schedule 5

Rights of action for damages

5 Rights of actions for damages

G

The table below sets out the *rules* in *MCOB* contravention of which by an *authorised person* may be actionable under section 150 of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.

If a "Yes" appears in the column headed "For private person?", the *rule* may be actionable by a "*private person*" under section 150 (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001 No 2256)). A "Yes" in the column headed "Removed" indicates that the *FSA* has removed the right of action under section 150(2) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.

The column headed "For other person?" indicates whether the *rule* may be actionable by a *person* other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* may be actionable is given.

1

Chapter/ Appendix	Section/ Annex	Paragraph	Right of action under section 150		
			For private person?	Removed?	For other person?
All <i>rules</i> in <i>MCOB</i> with the status letter "E"			No	No	No
Any <i>rule</i> in <i>MCOB</i> which prohibits an <i>authorised person</i> from seeking to make provision excluding or restricting any duty or liability			Yes	No	Yes Any other <i>person</i>
All other <i>rules</i> in <i>MCOB</i>			Yes	No	No

Mortgages: Conduct of Business

Schedule 6

Rules that can be waived

G

- 1 The *rules* in *MCOB* may be waived by the *FSA* under section 148 of the *Act* (Modification or waiver of rules).

**MORTGAGES: CONDUCT OF BUSINESS**  
**SOURCEBOOK (CONSEQUENTIAL AMENDMENTS TO THE HANDBOOK)**  
**INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 138 (General rule-making power);
  - (2) section 139(4) (Miscellaneous ancillary matters);
  - (3) section 145 (Financial promotion rules);
  - (4) section 146 (Money laundering rules);
  - (5) section 149 (Evidential provisions);
  - (6) section 150(2) (Actions for damages);
  - (7) section 156 (General supplementary powers);
  - (8) section 157(1) (Guidance);
  - (9) section 213 (The compensation scheme);
  - (10) section 214 (General);
  - (11) section 226 (Compulsory jurisdiction);
  - (12) section 229 (Awards);
  - (13) section 332(1) (Rules in relation to persons to whom the general prohibition does not apply);
  - (14) schedule 17 paragraph 13 (FSA’s procedural rules);
  - (15) article 15 (record-keeping and reporting requirements relating to relevant complaints) of the Ombudsman Transitional Order;
  - (16) regulation 3 of the Electronic Commerce Directive (Financial Services and Markets Act) Regulations 2002 (S.I. 2002/1775); and
  - (17) the other rule-making powers listed in Schedule 4 to the General provisions.

- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 31 October 2004.

**Amendments to the Handbook**

- D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2):

(1)	(2)
Reader’s Guide Reader’s Short Guide	Annex A
GEN	Annex B
COB	Annex C
TC	Annex D
ML	Annex E
AUTH	Annex F
SUP	Annex G
DISP	Annex H
COMP	Annex I
ECO	Annex J
ELM	Annex K
PROF	Annex L
EMPS	Annex M
FREN	Annex N
OMPS	Annex O
SERV	Annex P
Glossary	Annex Q

**Citation**

- E. This instrument may be cited as the Mortgages: Conduct of Business Sourcebook (Consequential Amendments to the Handbook) Instrument 2003.

By Order of the Board  
15 October 2003

Amended by Addendum  
19 October 2004

## Annex A

In this Annex, underlining indicates new text and striking through indicates deleted text.

### Amendments to the Reader's Guide

...

#### Contents of the Handbook

	Sourcebook or manual	Reference Code
Business Standards	...	
	Conduct of Business	COB
	<u>Mortgages: Conduct of Business</u>	<u>MCOB</u>
Specialist sourcebooks	...	
	Lloyd's	
	<del>Later: Mortgages</del>	<del>MORT</del>
	Recognised Investment Exchanges and Recognised Clearing Houses	REC
	...	

### Amendments to the Reader's Short Guide

...

#### Contents of the Handbook

	Sourcebook or manual	Reference Code
Business Standards	...	
	Conduct of Business	COB
	<u>Mortgages: Conduct of Business</u>	<u>MCOB</u>
Specialist sourcebooks	...	
	Lloyd's	



<del>Later: Mortgages</del>	MORT
Recognised Investment Exchanges and Recognised Clearing Houses ...	REC

## Annex B

### Amendments to GEN

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### Transitional provisions

...

GEN

3 Table: (2) Transitional provisions applying to GEN only

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	<i>GEN 2.2.7R</i>	R	...		
<u>2</u>	<u><i>GEN 4.3.1R</i></u>	<u>R</u>	<p>(1) For the purpose of <i>GEN 4.3.1R</i> (Disclosure in letters to private customers), a <i>regulated activity</i> does not include a <i>regulated mortgage activity</i>.</p> <p>(2) If a <i>firm</i> in a letter (or electronic equivalent) which it or its <i>employees</i> send to a <i>customer</i>, with a view to or in connection with the <i>firm</i> carrying out a <i>regulated mortgage activity</i>, makes a statement about its statutory or regulated status under the <i>Act</i> for carrying on a <i>regulated mortgage activity</i>, the <i>firm</i> must include the disclosure in <i>GEN 4 Ann 1R</i>.</p>	From <u>31 October 2004</u> until <u>15 July 2005</u>	<u>Apply in relation to regulated mortgage activities from 31 October 2004</u>

3	<u>GEN 4.3.1R</u>	<u>G</u>	<p>(1) <u>Transitional provision 2R defers the application of GEN rules so that a firm need only make one change to its statutory status disclosure to reflect the onset of mortgage regulation.</u></p> <p>(2) <u>Until 1 August 2005, a firm may continue to use stationery and similar materials which refer to its membership of self-regulatory schemes superseded by FSA regulation. However, a firm will need to ensure that any such reference is adequately qualified so that the customer is not misled as to the regulatory arrangements in place.</u></p>	<u>From 31 October 2004 until 15 July 2005</u>	<u>Apply in relation to regulated mortgage activities from 31 October 2004</u>
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...

4.2.2G There are other pre-contract information requirements outside this chapter, including:

- (1) ...
- (4) for *electronic commerce activities* by outgoing or domestic ECA providers, in ECO 2 (Outgoing ECA providers) and ECO 3 (Domestic (and non-EEA) ECA providers); and
- (5) for regulated mortgage contracts, in MCOB 4.4 (Initial disclosure requirements), MCOB 5.6 (Content of illustrations) and MCOB 6.4 (Content of the offer document).

## Annex C

### Amendments to COB

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.3.1R *COB* applies to *firms* with respect to the carrying on of:

(1) all *regulated activities* except:

(a) *regulated mortgage activities*; or

(b) to the extent that a provision of *COB* provides for a narrower application; and

...

1.3.2G (1) ...

...

(7) *MCOB* applies to a *firm* that carries on *regulated mortgage activities*.

...

3.1.2G This chapter applies generally to *firms* in relation to all *financial promotions*. This wide application is however cut back by *COB* 3.2 (Application: what?) and *COB* 3.3 (Application: where?) which limit the application of this chapter for:

(1) *financial promotions* for *deposits*, *general insurance contracts*, *pure protection contracts*, ~~and reinsurance contracts~~ and *regulated mortgage contracts*;

...

...

3.2.3R ...

Financial promotions for regulated mortgage contracts

3.2.3AR This chapter does not apply to a *firm* to the extent that a *financial promotion* is a *qualifying credit promotion* (but see *MCOB* 3 (Financial promotions)).

## Annex D

### Amendments to TC

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section is inserted, the place it goes is indicated and it is not underlined.

Transitional provisions

TC

1 Table: Transitional provisions relating to designated investment business

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
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...

After Table 1, insert the following new table:

2 Table: Transitional provisions relating to regulated mortgage contracts (including regulated lifetime mortgage contracts) for individuals employed at 31 October 2004

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
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1.	TC 2	<p>Competent employees (mortgages including lifetime mortgages)</p> <p>(1) This transitional provision applies:</p> <p>(a) in relation to <i>regulated mortgage contracts</i> including <i>regulated lifetime mortgage contracts</i>; and</p> <p>(b) in respect of an individual employed by a <i>firm</i> at 31 October 2004, if that individual had before that date been assessed as competent by the <i>firm</i> in accordance with the rules of the Mortgage Code Compliance Board applying immediately before 31 October 2004.</p> <p>(2) The <i>firm</i> in 1(b) will not contravene any of the provisions in TC 2.4.5R provided that:</p> <p>(a) the activity which the individual engages in or oversees continues to be the same, or substantially the same as that immediately before 31 October 2004; and</p> <p>(b) the individual has not experienced any significant break of employment since the previous assessment.</p> <p>(3) Any other <i>firm</i> which subsequently employs the individual in 1(b) will not contravene TC 2.4.5R(2) provided that:</p> <p>(a) the conditions in 2(a) and (b) are met; and</p> <p>(b) the <i>firm</i> assesses the individual to be competent in accordance with TC 2.4.5R(1).</p>	From 31 October 2004	Apply in relation to <i>regulated mortgage contracts</i> from 31 October 2004
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...

2.1.2R (1) In relation to *designated investment business*:

(a) This chapter applies to a *UK domestic firm* in respect of its *employees* who engage in or oversee activities (to the extent indicated in TC 2.1.4R):

(a i) ... ; and

(a ii) ...

(b) This chapter applies to an *overseas firm* ...

(2) In relation to regulated mortgage activities carried on with or for a customer, this chapter applies if the customer is resident in:

(a) the United Kingdom; or

(b) another EEA State, but in this case only if the activity is carried on from an establishment maintained by the firm or its appointed representative in the United Kingdom only;

at the time that the regulated mortgage activity is carried on.

...

2.1.4R Table: Activities to which TC 2 applies

	Activity	Extent of Application
1. <i>Employees</i> engaging in:	<p>Advising (without dealing)</p> <p>(f) ...</p> <p>...</p> <p>(p) <u>advising a customer on a regulated mortgage contract (including a regulated lifetime mortgage contract) other than a regulated mortgage contract that is for a business purpose.</u></p> <p><u>Non-advised sales</u></p> <p>(q) <u>designing scripted questions for use in sales to customers of regulated lifetime mortgage contracts which do not involve personal</u></p>	<p><u>1. In relation to designated investment business:</u></p> <p>(a) <u>If the activity is carried on with or for a private customer, whole of TC 2 applies;</u></p> <p>(b) <u>If the activity is carried on with or for an intermediate customer or a market counterparty only TC 2.4, 2.5, 2.6 and 2.8 apply.</u></p> <p><u>2. In relation to regulated mortgage activities, whole of TC 2 applies.</u></p>

<p>2. <i>Employees</i> overseeing on a day-to-day basis:</p>	<p style="text-align: center;"><u>recommendations.</u></p> <p>(a) ...</p> <p>(b) <i>safeguarding and administering investments</i> or holding of <i>client money</i> (<u>unless held in the course of carrying on a mortgage mediation activity</u>);</p> <p>...</p> <p>(g) <u>the sales to customers of regulated lifetime mortgages which do not involve personal recommendations.</u></p>	
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2.4.3G In *TC 2.4.2R(2)* an adequate level of application of knowledge and skills includes:

- (1) specific knowledge of the *firm's* relevant systems and procedures, and of the kinds of *designated investment business* and *regulated mortgage activities* carried on by the *firm* and any other members of its *marketing group*; and
- (2) appropriate skills in analysing *private customers'* needs and circumstances when applying relevant knowledge.

...

2 Ann 1R

The interim approved examinations referred to in *TC 2 R*

TC

4 Table: *TC 2.1.4R(1)(d)* Employees engaging in advising on regulated mortgage contracts (including regulated lifetime mortgage contracts) (other than regulated mortgage contracts that are for a business purpose).

<b><u>Examination that must be passed within two years of starting the activity</u></b>	
<u>Certificate in Mortgage Advice and Practice (CeMAP) all three papers</u>	<u>Institute of Financial Services</u>
<u>Certificate in Mortgage Advice and Practice (MAPC) all three papers.</u>	<u>Chartered Institute of Bankers in Scotland</u>



**BRIDGE PAPERS plus entry requirements ie CeFA, FPC, CIP or equivalent**

<u>CeMAP Bridge Paper</u>	<u>Institute of Financial Services</u>
<u>MAPC Bridge Paper</u>	<u>Chartered Institute of Bankers in Scotland</u>
<u>Mortgage Advice Qualification (MAQ)</u>	<u>Chartered Insurance Institute</u>

[New examination to be developed – including requirements for *regulated lifetime mortgage contracts*.]

## Annex E

### Amendments to ML

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 1.1.3G The scope of this sourcebook is very wide. It includes all *firms* except:
- (1) those within the limited exception for *firms* concerned only with certain insurance activities and *UCITS qualifiers* (see *ML 1.1.2R*); in this respect, the chapter follows article 1 of the *Money Laundering Directive* (No. 91/308/EEC as amended by No 2001/97/EEC);
  - (2) those within the exception for *firms* carrying on any *mortgage mediation activity* (see *ML 1.1.4R(5)*); in this respect, the chapter follows [article [] of the [] [to be added when 2003 Money laundering Regulations are in final form]].

The scope extends to *incoming firms* ...

- 1.1.4R In this sourcebook, “*relevant regulated activities*” means any *regulated activity* apart from:
- (1) ...  
...
  - (3) business relating to contracts which are within the *Regulated Activities Order* only because they fall within paragraph (e) of the definition of “*contract of insurance*” in article 3 of that *Order* (see the *Glossary*);  
~~and~~
  - (4) (a) arranging, by the *Society of Lloyd’s*, of deals in *general insurance contracts* written at Lloyd’s; ~~and~~  
(b) *managing the underwriting capacity of a Lloyd’s syndicate as a managing agent at Lloyd’s*; and
  - (5) *mortgage mediation activity*.

## Annex F

### Amendments to AUTH

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.5.3G As a general guide, all applicants for *Part IV permission* should be familiar with the *threshold conditions (COND)* and the *Principles for Businesses (PRIN)* in the High Level Standards part of the *Handbook*. To complete an application for *Part IV permission*, an applicant will also need to have regard to the following matters:

- (1) ...
- ...
- (4) Other regulatory obligations:
  - (a) the detailed regulatory obligations that apply to certain types of *firm* or *regulated activity* in *COB*, *MCOB*, the Market Conduct sourcebook (*MAR*) and *SUP*;
  - ...

...

#### **Rights under a regulated mortgage contract**

2.6.27G ~~Regulated mortgage contracts will be *specified investments* with effect from a future date. The Treasury has indicated that it expects this date to be in 2004. Regulated mortgage contracts will be *specifies investments* with effect from the date nine months following the date on which section 19 of the *Act* comes into force.~~

In accordance with article 61(3)(a) of the *Regulated Activities Order*, a *regulated mortgage contract* is a contract which, at the time it is entered into, satisfies the following conditions:

- (1) the contract is one where the lender provides credit to an individual or trustees (the “borrower”);
- (2) the obligation of the borrower to repay is secured by a first legal charge on land (other than timeshare accommodation) in the *United Kingdom*; and
- (3) at least 40% of that land is used, or is intended to be used, as or in connection with a dwelling by the borrower (or, where trustees are the borrower, by an individual who is a beneficiary of the trust) or by a related person.

Detailed guidance on this is set out in *AUTH App 4.4 (Guidance on regulated activities connected with mortgages)*.

...

AUTH

2 Table: G

(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
... <i>LLD</i>	Does not apply.	Does not apply.
<u><i>MCOB</i></u>	<u>Applies where the activity is carried on with or for a customer resident in the United Kingdom or another EEA State at the time that the activity is carried on, but see the territorial scope in MCOB 3.3 (Application: where?).</u>	<u>Applies where the activity is carried on with or for a customer resident in the United Kingdom at the time, that the activity is carried on but see MCOB 1.3.4R (Distance contracts entered into from an establishment in another EEA State) and MCOB 3.3 (Application: where?).</u>
<i>PROF</i> ...	<i>PROF</i> applies only if the firm is an authorised professional firm.	As column (2).

...

**Appendix 4 to the Authorisation manual.****Guidance on regulated activities connected with mortgages****Contents**

- 4.1 Application and purpose
- 4.2 Introduction
- 4.3 Regulated activities related to mortgages
- 4.4 What is a regulated mortgage contract?

- 4.5 Arranging regulated mortgage contracts
- 4.6 Advising on regulated mortgage contracts
- 4.7 Entering into a regulated mortgage contract
- 4.8 Administering a regulated mortgage contract
- 4.9 Agreeing to carry on a regulated activity
- 4.10 Exclusions applying to more than one regulated activity
- 4.11 Link between activities and the United Kingdom
- 4.12 Appointed representatives
- 4.13 Other exemptions
- 4.14 Mortgage activities carried on by professional firms
- 4.15 Mortgage activities carried on by ‘packagers’
- 4.16 Mortgage activities and securitisation
- 4.17 Interaction with the Consumer Credit Act
- 4.18 Regulated activities related to mortgages: flowchart

#### **4.1 Application and purpose**

##### **Application**

- 4.1.1G This appendix applies to any *person* who needs to know whether the activities he conducts in relation to mortgages are subject to *FSA* regulation.

##### **Purpose of guidance**

- 4.1.2G With effect from 31 October 2004 certain activities relating to mortgages will be regulated by the *FSA* for the first time. The purpose of this *guidance* is to help *persons* decide whether they need *authorisation* and, if they do, to determine the scope of the *Part IV permission* for which they will need to apply.

##### **Effect of guidance**

- 4.1.3G This *guidance* is issued under section 157 of the *Act* (Guidance). It is designed to throw light on particular aspects of regulatory requirements, not to be an exhaustive description of a *person's* obligations. If a *person* acts in line with the *guidance* in the circumstances contemplated by it, then the *FSA* will proceed on the footing that the *person* has complied with aspects of the requirement to which the *guidance* relates.
- 4.1.4G Rights conferred on third parties cannot be affected by *guidance* given by the *FSA*. This *guidance* represents the *FSA's* view, and does not bind the courts,

for example, in relation to an action for damages brought by a *private person* for breach of a *rule* (see section 150 of the *Act* (Action for damages)), or in relation to the enforceability of a contract where there has been a breach of the *general prohibition* on carrying on a *regulated activity* in the *United Kingdom* without *authorisation* (see sections 26 to 29 of the *Act* (Enforceability of agreements)). A *person* may need to seek his own legal advice.

4.1.5G Anyone reading this *guidance* should refer to the *Act* and to the various Orders that are referred to in this *guidance*. These should be used to find out the precise scope and effect of any particular provision referred to in this *guidance*.

### **Guidance on other activities**

4.1.6G A *person* may be intending to carry on activities related to other forms of investment in connection with mortgages, such as advising on and arranging an endowment policy or ISA to repay an *interest-only mortgage*. Such a *person* should also consult the *guidance* in *AUTH 2* (Authorisation and regulated activities) and *AUTH App 1* (Financial promotion and related activities), and *AUTH App 5* (Mediation of general and pure protection insurance).

## **4.2 Introduction**

### **Requirement for authorisation or exemption**

4.2.1G In most cases, any *person* who carries on a *regulated activity* in the *United Kingdom* by way of business must either be an *authorised person* or an *exempt person*. Otherwise, the *person* commits a criminal offence and certain agreements may be unenforceable. *AUTH 2.2* (Introduction) contains further *guidance* on these consequences. In order to be *authorised*, a *person* must either:

- (1) hold a *Part IV permission* given by the *FSA* (see *AUTH 1.3* (The Authorisation manual) and *AUTH 3* (Applications for Part IV permission)); or
- (2) qualify for *authorisation* (see *AUTH 5* (Qualifying for authorisation under the Act)), for example if the *person* is an *EEA firm* or a *Treaty firm*.

### **Professional firms**

4.2.2G Certain *professional firms* are allowed to carry on some *regulated activities* without *authorisation* so long as they comply with specified conditions (see *AUTH App 4.14* (Mortgage activities carried on by professional firms)).

### **Questions to be considered to decide if authorisation is required**

4.2.3G A *person* who is concerned to know whether his proposed activities may require *authorisation* will need to consider the following questions (these questions are a summary of the issues to be considered and have been reproduced, in slightly fuller form, in the flowchart in *AUTH App 4.18*):

- (1) will I be carrying on my activities by way of business (see *AUTH* App 4.3.3G (The business test))?
- (2) if so, will my *activities* relate to *regulated mortgage contracts* (see *AUTH* App 4.4 (What is a regulated mortgage contract?))?
- (3) if so, will I be carrying on any of the *regulated mortgage activities* (see *AUTH* App 4.5 (Arranging regulated mortgage contracts) to *AUTH* App 4.9 (Agreeing to carry on a regulated activity))?
- (4) if so, is there the necessary link with the *United Kingdom* (see *AUTH* App 4.11 (Link between activities and the United Kingdom))?
- (5) if so, will any or all of my activities be excluded (see *AUTH* App 4.5 (Arranging regulated mortgage contracts) to *AUTH* App 4.10 (Exclusions applying to more than one regulated activity))?
- (6) if it is not the case that all of my activities are excluded, am I a *professional firm* whose activities are exempted under Part XX of the *Act* (see *AUTH* App 4.14 (Mortgage activities carried on by professional firms))?
- (7) if not, am I exempt as an *appointed representative* (see *AUTH* App 4.12 (Appointed representatives))?
- (8) if not, am I otherwise an *exempt person* (see *AUTH* App 4.13 (Other exemptions))?

If a *person* gets as far as question (8) and the answer to that question is ‘no’, that *person* requires *authorisation* and should refer to *AUTH* 3 (Applications for Part IV permission).

4.2.4G Even if the *person* does not require *authorisation*, he may still require a licence under the Consumer Credit Act 1974 to carry on the activity (see *AUTH* App 4.17 (Interaction with the Consumer Credit Act 1974)).

### **Financial promotion**

4.2.5G An *unauthorised person* who intends to carry on activities connected with mortgages will also need to comply with section 21 of the *Act* (Restrictions on financial promotion). This appendix does not cover *financial promotions* that relate to mortgages. *Persons* should refer to the general *guidance on financial promotion* in Appendix 1 to the Authorisation manual (*AUTH* App 1 (Financial promotion and related activities)) and, in particular, to *AUTH* App 1.17 (Financial promotions concerning agreements for qualifying credit).

## 4.3 Regulated activities related to mortgages

4.3.1G There are six *regulated mortgage activities* requiring *authorisation* or exemption if they are carried on in the *United Kingdom*. These are set out in the *Regulated Activities Order*. They are:

- (1) *arranging (bringing about) regulated mortgage contracts* (article 25A(1) (Arranging regulated mortgage contracts));
- (2) *making arrangements with a view to regulated mortgage contracts* (article 25A(2) (Arranging regulated mortgage contracts));
- (3) *advising on regulated mortgage contracts* (article 53A (Advising on regulated mortgage contracts));
- (4) *entering into a regulated mortgage contract* as lender (article 61(1) (Regulated mortgage contracts));
- (5) *administering a regulated mortgage contract* where that contract is entered into by way of business on or after 31 October 2004 (article 61(2) (Regulated mortgage contracts)); and
- (6) *agreeing to carry on* any of the above (article 64 (Agreeing to carry on specified kinds of activity)).

4.3.2G The scope of these activities is limited by certain exclusions contained in Parts II and III of the *Regulated Activities Order*. These exclusions are referred to in *AUTH* App 4.5 (Arranging regulated mortgage contracts) to *AUTH* App 4.10 (Exclusions applying to more than one regulated activity).

### The business test

4.3.3G A *person* will only need *authorisation* or exemption if he is carrying on a *regulated activity* 'by way of business' (see section 22 of the *Act* (Regulated activities)). There are, in fact, three different forms of business test applied to the *regulated mortgage activities*. In the *FSA's* view, however, the difference in the business tests should have little practical effect.

4.3.4G There is power in the *Act* for the Treasury to change the meaning of the business test by including or excluding certain things. The *Business Order* has been made using this power (partly reflecting differences in the nature of the different activities). The result (which is summarised in *AUTH* App 4.3.5G) is that:

- (1) the 'by way of business' test in section 22 of the *Act* applies unchanged in relation to the activity of *entering into a regulated mortgage contract*;
- (2) the 'by way of business' test in section 22 of the *Act* applies unchanged in relation to the activity of *administering a regulated mortgage contract*, but another 'by way of business' test arises because the



contract being administered by way of business must itself have been entered into by way of business (see *AUTH* App 4.8.2G); and

- (3) in the case of arranging and advising, the effect of article 3A of the *Business Order* (Arranging and advising on regulated mortgage contracts) is that a *person* is not to be regarded as acting ‘by way of business’ unless he is ‘carrying on the business of engaging in one or more of those activities’.

4.3.5G Table Summary of which variant of the business test applies to the different *regulated mortgage activities*. This table belongs to *AUTH* App 4.3.4G

By way of business	Carrying on the business
<i>Entering into a regulated mortgage contract</i> (article 61(1))	<i>Arranging (bringing about) regulated mortgage contracts</i> (article 25A(1))
<i>Administering a regulated mortgage contract</i> (article 61(2)) (and the contract administered must have been entered into by way of business)	<i>Making arrangements with a view to regulated mortgage contracts</i> (article 25A(2))
	<i>Advising on regulated mortgage contracts</i> (article 53A)

4.3.6G The ‘carrying on the business’ test in the *Business Order* is a narrower test than that of carrying on *regulated activities* ‘by way of business’ in section 22 of the *Act* as it requires the *regulated activities* to represent the carrying on of a business in their own right. Whether or not the business test is satisfied in any particular case is ultimately a question of judgement that takes account of a number of factors (none of which is likely to be conclusive). The nature of the particular *regulated activity* that is carried on will also be relevant to the factual analysis. The relevant factors include:

- (1) the degree of continuity;
- (2) the existence of a commercial element; and
- (3) the scale of the activity and, for the ‘by way of business’ test, the proportion which the activity bears to the other activities carried on by the same *person* but which are not regulated.

In the case of the ‘carrying on the business’ test, these factors will need to be considered having regard to all the activities together.

4.3.7G The main factor that might cause an activity to satisfy the ‘by way of business’ test in section 22 but not the narrower ‘carrying on the business’ test in the *Business Order* is that of frequency or regularity. As a general rule, the activity would need to be undertaken with some degree of frequency or regularity to satisfy the narrower ‘carrying on the business’ test. Conversely, the ‘by way of business’ test in section 22 could be satisfied by an activity undertaken on an isolated occasion (provided that the activity would be regarded as done by ‘way of business’ in all other respects).

4.3.8G It follows that whether or not any particular *person* may be carrying on a *regulated mortgage activity* ‘by way of business’ will depend on his individual circumstances. However, some typical examples where the applicable business test would be likely to be satisfied are where a *person*:

- (1) enters into one or more *regulated mortgage contracts* as lender in the expectation of receiving interest or another form of payment that would enable him to profit from his actions or recover the cost of taking them;
- (2) administers a *regulated mortgage contract* in return for a payment of some kind (whether in cash or in kind); and
- (3) arranges or advises on *regulated mortgage contracts*, or does both, on a regular basis and receives payment of some kind (whether in cash or in kind and whether from the borrower or from some other *person*).

4.3.9G Some typical examples where the business test is unlikely to be satisfied are:

- (1) when an individual enters into or administers a one-off mortgage securing a loan to a friend or member of his family whether at market interest rates or not;
- (2) when a *person* provides a service without any expectation of reward or payment of any kind, such as advice given or arrangements made by many Citizens Advice Bureaux and other voluntary sector agencies (but see *AUTH* App 4.3.8G(3) where payment is received for advice).

#### 4.4 What is a regulated mortgage contract?

##### The definition of “regulated mortgage contract”

4.4.1G Article 61(3)(a) of the *Regulated Activities Order* defines a *regulated mortgage contract* as a contract which, at the time it is entered into, satisfies the following conditions:

- (1) the contract is one where a lender provides credit to an individual or trustees (the ‘borrower’);
- (2) the obligation of the borrower to repay is secured by a first legal mortgage on land (other than timeshare accommodation) in the *United Kingdom*; and
- (3) at least 40% of that land is used, or is intended to be used, as or in connection with a dwelling by the borrower (or, where trustees are the borrower, by an individual who is a beneficiary of the trust) or by a related person.

*AUTH* App 4.4.2G to *AUTH* App 4.4.9G set out the *FSA*’s understanding of some key concepts contained in Article 61(3)(a).

##### Which borrowers?

- 4.4.2G The condition set out in *AUTH* App 4.4.1G(1) limits the range of borrowers to whom the protections of the mortgage regulation regime apply to individuals and trustees. If a company (which is not acting as a trustee) borrows money for the purpose of funding the company's business, and the loan is secured by a mortgage over the company's property, the mortgage contract is not a *regulated mortgage contract*. So a lender will not carry on a *regulated activity* by entering into that contract, nor will the lender carry on a *regulated activity* if it advises on, arranges or administers that contract. However, if the lender makes a loan for business purposes to an individual sole trader, or (in England and Wales) a partnership, and the loan is secured on the borrower's house or houses, the contract will be a *regulated mortgage contract*.

#### **Date the contract is entered into**

- 4.4.3G In order to meet the definition of a *regulated mortgage contract*, a mortgage contract must meet the conditions set out in *AUTH* App 4.4.1G(1) to (3) at the time it was entered into. The effect is that contracts which meet those conditions at that time remain *regulated mortgage contracts* throughout their remaining term, even if there are periods of time when some or all of the conditions are not satisfied. Conversely, contracts that do not start out as *regulated mortgage contracts* cannot subsequently become so, even if they later meet all the conditions set out in *AUTH* App 4.4.1G(1) to (3). A *person* that only administers mortgage contracts which did not meet those conditions at the time they were entered into will not, therefore, need *permission* to *administer regulated mortgage contracts*.

- 4.4.4G There may, however, be instances where an existing contract, which was not a *regulated mortgage contract* at the time it was entered into, is replaced as a result of a variation (whether the variation is initiated by the *customer* or by the lender), and the new contract qualifies as a *regulated mortgage contract*. A *person* may therefore need to consider this possibility (which could affect contracts initially entered into before 31 October 2004 as well as subsequent loans) when deciding whether he needs *permission* to carry on any of the *regulated mortgage activities*.

#### **Land in the United Kingdom**

- 4.4.5G The condition set out in *AUTH* App 4.4.1G(2) means that a *regulated mortgage contract* must be secured on land in the *United Kingdom*. Contracts which involve taking security over moveable property therefore cannot be *regulated mortgage contracts*. So a contract secured on a caravan will not be a *regulated mortgage contract*, unless the contract also involves a mortgage over the land on which the caravan stands.

#### **Occupancy requirement**

- 4.4.6G The condition set out in *AUTH* App 4.4.1G(3) means that loans secured on property which is entirely used for business purposes (such as an office block) cannot fall within the definition. However, loans secured on 'mixed use' property could be covered, provided that the borrower (or trust beneficiary, where the borrowers are trustees) or a 'related person' uses at least 40% of the total of the land as or in connection with a dwelling. Loans secured on a six-

floor property, half of which was occupied by the borrower and half let out for business purposes would therefore satisfy the definition. (Article 61(4)(b) makes it clear that ‘land’, in the context of a multi-storey building, means the aggregate of the floor area of each of the storeys.)

4.4.7G The expression ‘as or in connection with a dwelling’ set out in *AUTH* App 4.4.1G(3) means that loans to buy a small house with a large garden would in general be covered. However, if at the time of entering into the contract the intention was for the garden to be used for some other purpose – for example, if it was intended that a third party were to have the use of the garden – the contract would not constitute a *regulated mortgage contract*. Furthermore, the *FSA* would not regard a loan to purchase farmland and a farmhouse as constituting a *regulated mortgage contract* (where the farmhouse and garden amount to less than 40% of the land area), since it does not appear that the land could properly be said to be used ‘in connection with’ the farmhouse. The presence of the farmhouse is unconnected with the use to which the farmland is put (in contrast to a residential property’s garden, which would have no existence independent of the property).

4.4.8G The requirement that at least 40% of the land area be used as or in connection with a dwelling means that ‘buy to let’ loans secured on the property to be let are excluded, unless the lessee is a ‘related person’ to the borrower. Even if the borrower subsequently takes possession of the property, the loan will still not become a *regulated mortgage contract*, as the conditions set out in *AUTH* App 4.4.1G(1) to (3) were not satisfied at the outset of the contract (see *AUTH* App 4.4.3G).

4.4.9G ‘Related person’ is defined in article 61(4)(c) of the *Regulated Activities Order* as meaning the borrower’s spouse, parents, grandparents, siblings, children and grandchildren. An unmarried partner of the borrower whose relationship with the borrower has the characteristics of the relationship between a husband and wife is also included; this can include a person of the same sex as the borrower. Stepchildren, however, would seem to be excluded.

#### **Purpose of the loan is irrelevant**

4.4.10G The definition of *regulated mortgage contract* contains no reference to the purpose for which the loan is being made. So, in addition to loans made to individuals to purchase residential property, the definition is wide enough to cover other loans secured on land, such as loans to consolidate debts, or to enable the borrower to purchase other goods and services.

#### **Type of lending**

4.4.11G The definition of *regulated mortgage contract* also covers a variety of types of product. Apart from the normal mortgage loan for the purchase of property, the definition also includes other types of secured loan, such as a secured overdraft facility, a secured bridging loan, a secured credit card facility, and so-called ‘equity release loans’ (defined as *regulated lifetime mortgage contracts* in this *guidance*) under which the borrower (usually an older person) takes out a loan where repayment of the capital (and in some cases the

interest) is not required until the property is sold, usually on the death of the borrower.

4.4.12G A number of products, however, are excluded from the definition, such as:

- (1) loans secured by a second or subsequent charge (as the lender does not have a first charge);
- (2) loans secured on commercial premises (as the borrower will not be using the land as or in connection with a dwelling);
- (3) so-called 'home reversion schemes', under which a property owner (usually an older person) sells some or all of his interest in the property in return for a lump sum (usually a proportion of the value of the property sold) and a right to reside at the property for the rest of his life.

#### **Regulated mortgage contracts and contract variations**

4.4.13G The effect of the *Regulated Activities Order* is that mortgage contracts which are varied can fall into one of the following categories:

- (1) a contract that was entered into before 31 October 2004, and that is subsequently varied after that date so that it satisfies the conditions set out in *AUTH* App 4.4.1G(1) to (3), will not be a *regulated mortgage contract* (because it was not a *regulated mortgage contract* at the time it was entered into);
- (2) a contract that was originally entered into before 31 October 2004, but is subsequently changed after that date such that a new contract is entered into, will be a *regulated mortgage contract* (provided, of course, that it meets the definition in the *Regulated Activities Order*); and
- (3) a *regulated mortgage contract* that was originally entered into after 31 October 2004, and which is subsequently varied by, for example, making a further advance, will remain a *regulated mortgage contract*.

4.4.14G It is possible for more than one mortgage contract to be secured by the same (first) charge. The first contract might be entered into before 31 October 2004 (and therefore not be a *regulated mortgage contract*) and a second contract entered into after 31 October 2004 (and be a *regulated mortgage contract*).

### **4.5 Arranging regulated mortgage contracts**

#### **Definition of the regulated activities involving arranging**

4.5.1G Article 25A of the *Regulated Activities Order* describes two types of *regulated activities* concerned with *arranging regulated mortgage contracts*. These are:

- (1) making arrangements for another *person* to:
  - (a) enter into a *regulated mortgage contract* as borrower; or

- (b) vary the terms of a *regulated mortgage contract* entered into by him as borrower after 31 October 2004 in such a way as to vary his obligations under the contract; and
- (2) making arrangements with a view to a *person* who participates in the arrangements entering into a *regulated mortgage contract* as borrower.

4.5.2G The first activity (article 25A(1)) is referred to in this *guidance* as *arranging (bringing about) regulated mortgage contracts*. Various points arise:

- (1) it is not necessary for the potential borrower himself to be involved in making the arrangements.
- (2) this activity is carried on only if the arrangements bring about, or would bring about a *regulated mortgage contract*. This is because of the exclusion in article 26 (see *AUTH App 4.5.4G*).
- (3) this activity therefore includes the activities of brokers who make arrangements on behalf of a borrower to enter into or vary a *regulated mortgage contract* where these arrangements go beyond merely introducing (see *AUTH App 4.5.10G*) or advising (although giving advice may be the *regulated activity* of *advising on regulated mortgage contracts*). Such arrangements might include, for instance, negotiating the terms of the *regulated mortgage contract* with the eventual lender, on behalf of the borrower. It also includes the activities of certain so-called ‘packagers’ (see *AUTH App 4.15* (Mortgage activities carried on by ‘packagers’)).
- (4) *AUTH App 4.6.2G* contains examples of variations that are, in the *FSA’s* view, within the definition of *advising on regulated mortgage contracts* and would also be covered by article 25A(1) arrangements.

4.5.3G The second activity (article 25A(2)) is referred to in this *guidance* as *making arrangements with a view to regulated mortgage contracts*. This activity is different from article 25A(1) ) because it requires a potential borrower to actively participate by utilising the arrangements to enter into a *regulated mortgage contract*. It does not require that the arrangements would bring about a *regulated mortgage contract*. Nor does it cover arrangements leading to contract variations. It includes the activities of introducers (see *AUTH App 4.5.10G* below) introducing potential borrowers to brokers and lenders. It may also, in certain circumstances, extend to the activities of a publisher, broadcaster or website operator, albeit subject to exclusions in the *Regulated Activities Order* (see *AUTH App 4.5.5G* and *AUTH App 4.5.6G*).

**Exclusion: article 25A(1) arrangements not causing a deal**

4.5.4G Article 26 of the *Regulated Activities Order* (Arrangements not causing a deal) excludes from article 25A(1) arrangements which do not bring about or would not bring about the *regulated mortgage contract* in question. In the *FSA’s* view, a *person* brings about or would bring about a *regulated mortgage contract* if his involvement in the chain of events leading to the transaction is of enough importance that without that involvement it would not take place.

### **Exclusion: article 25A(2) arrangements enabling parties to communicate**

4.5.5G Article 27 of the *Regulated Activities Order* (Enabling parties to communicate) contains an exclusion that applies to arrangements which might otherwise fall within article 25A(2) merely because they provide the means by which one party to a *regulated mortgage contract* (or potential *regulated mortgage contract*) is able to communicate with other parties. Simply providing the means by which parties to a *regulated mortgage contract* (or potential *regulated mortgage contract*) are able to communicate with each other is excluded from article 25A(2) only. This will ensure that *persons* such as Internet service providers or telecommunications networks are excluded if all they do is provide communication facilities (and these would otherwise be considered to be *arrangements made with a view to regulated mortgage contracts*).

4.5.6G In the *FSA's* view, the crucial element of the exclusion in article 27 is the inclusion of the word “merely”. When a publisher, broadcaster or Internet website operator goes beyond what is necessary for him to provide his service of publishing, broadcasting or otherwise facilitating the issue of promotions, he may well bring himself within the scope of article 25A(2). Further detailed *guidance* relating to the scope of the exclusion in article 27 is contained in *AUTH App 1.32.6G* to *AUTH App 1.32.11G*.

### **Exclusion: article 25A(1) and (2) arranging of contracts to which the arranger is a party**

4.5.7G Arranging a *regulated mortgage contract* (or contract variation) to which the arranger is to be a party is excluded from both article 25A(1) and (2) by article 28A of the *Regulated Activities Order* (Arranging contracts to which the arranger is a party). As a result, a *person* cannot both be *entering into a regulated mortgage contract* and arranging a *regulated mortgage contract* under article 25A as regards a particular *regulated mortgage contract*. This means that a direct sale by a mortgage lender does not involve the *regulated activity* of arranging but, if the transaction is completed, does involve the *regulated activity of entering into a regulated mortgage contract*. The *FSA's* rules on *arranging regulated mortgage contracts*, however, do apply to direct sales.

### **Exclusion: article 25A(1) and (2) arrangements with or through authorised persons**

4.5.8G An *unauthorised person* who makes arrangements for or with a view to a *regulated mortgage contract* between a borrower and an *authorised person*, is excluded from article 25A(1) and (2) by article 29 of the *Regulated Activities Order* (Arranging deals with or through authorised persons) if specified conditions as to advice and remuneration are satisfied. For example, the exclusion is dependent on the borrower not receiving any advice on the *regulated mortgage contract* from the *unauthorised person* making the arrangements. Additionally, payment must not be received unless it is accounted for to the borrower (which, in the *FSA's* view, means that it must be paid over to, or treated as belonging to and held to the order of, the borrower).

**Exclusion: article 25A(1) and (2) arrangements made in the course of administration by authorised person**

4.5.9G Article 29A of the *Regulated Activities Order* excludes from both article 25A(1) and (2) certain activities of an *unauthorised person* who is taking advantage of the exclusion from *administering a regulated mortgage contract* in article 62 (Exclusion: arranging administration by authorised persons) (see *AUTH* App 4.8.4G).

**Exclusion: article 25A(2) arrangements and introducing**

4.5.10G Article 33A of the *Regulated Activities Order* (Introducing to authorised persons) excludes from article 25A(2) arrangements under which a borrower is introduced to certain *persons*. Introducing is only a *regulated activity* under article 25A(2) as it does not of itself bring about *regulated mortgage contracts* (see *AUTH* App 4.5.2G).

4.5.11G The exclusion applies for introductions to:

- (1) an *authorised person* who has *permission* to carry on a *regulated activity* specified in article 25A (Arranging regulated mortgage contracts) or article 53A (Advising on regulated mortgage contracts) or article 61(1) (Entering into a regulated mortgage contract as lender); introducers can check the status of an *authorised person* and its *permission* by visiting the *FSA*'s register at [www.fsa.gov.uk](http://www.fsa.gov.uk);
- (2) an *appointed representative* who is appointed to carry on a *regulated activity* specified in article 25A or article 53A of the *Regulated Activities Order*; introducers can check the status of an *appointed representative* by visiting the *FSA*'s register at [www.fsa.gov.uk](http://www.fsa.gov.uk); the *FSA* would normally expect introducers to request and receive confirmation of the *regulated activities* that the *appointed representative* is appointed to carry on, prior to proceeding with an introduction;
- (3) an *overseas person* who carries on a *regulated activity* specified in article 25A (Arranging regulated mortgage contracts) or article 53A (Advising on regulated mortgage contracts) or article 61(1) (Entering into a regulated mortgage contract).

4.5.12G The exclusion in article 33A only applies when the introducer satisfies two conditions:

- (1) he does not receive any money paid by the borrower in connection with any transaction that the borrower enters into with or through the *person* to whom the borrower is introduced as a result of the introduction, other than money payable to him on his own account; and
- (2) before making the introduction he discloses to the borrower all relevant information described in *AUTH* App 4.5.14G.



- 4.5.13G In the *FSA's* view money payable to an introducer on his own account includes money legitimately due to him for services rendered to the borrower, whether in connection with the introduction or otherwise. It also includes sums payable to an introducer (for example, a housebuilder) by a borrower in connection with a transfer of property. For example, article 33A allows a housebuilder to receive the purchase price on a property that he sells to a borrower, whom he previously introduced to an *authorised person* or *appointed representative* to help him finance the purchase and still take the benefit of the exclusion. This is because the sums that the housebuilder receives in connection with the introduction and with the sale of his property to the borrower are both "payable to him on his own account". The housebuilder may also receive a commission from the *person* introduced to. He may not, however, receive any sums payable by the borrower to the *person* to whom the borrower is introduced, for example valuation fees, as those sums are not payable to the housebuilder on his own account
- 4.5.14G The information that the introducer must disclose to the borrower prior to making the introduction is, where relevant:
- (1) that he is a member of the same *group* as the *person* (N) to whom the borrower is introduced;
  - (2) details of any payment which he will receive from N, by way of fee or commission, for introducing the borrower to N; and
  - (3) an indication of any other reward or advantage arising out of his introducing to N.
- 4.5.15G In the *FSA's* view, details of fees or commission referred to in *AUTH* App. 4.5.14G(2) does not require an introducer to provide an actual sum to the borrower, where it is not possible to calculate the full amount due prior to the introduction. This may arise in cases where the fee or commission is a percentage of the eventual loan taken out and the amount of the required loan is not known at the time of the introduction. In these cases, it would be sufficient for the introducer to disclose the method of calculation of the fee or commission, for example the percentage of the eventual loan to be made by N.
- 4.5.16G In the *FSA's* view, the information condition in *AUTH* App. 4.5.14G(3) requires the introducer to indicate to the borrower any other advantages accruing to him as a result of ongoing arrangements with N relating to the introduction of borrowers. This may include, for example, indirect benefits such as office space, travel expenses, subscription fees and this and other relevant information may be provided on a standard form basis to the borrower, as appropriate.
- 4.5.17G The *FSA* would normally expect an introducer to keep a written record of disclosures made to the borrower under article 33A of the *Regulated Activities Order* including those cases where disclosure is made on an oral basis only.

- 4.5.18G In addition to the exclusion in article 33A, introducers may be able to take advantage of the exclusion in article 33 of the *Regulated Activities Order* (Introducing). This excludes arrangements where:
- (1) they are arrangements under which *persons* will be introduced to another *person*;
  - (2) the *person* to whom introductions are to be made is:
    - (a) an *authorised person*; or
    - (b) an *exempt person* acting in the course of business comprising a *regulated activity* in relation to which he is exempt; or
    - (c) a *person* who is not unlawfully carrying on *regulated activities* in the *United Kingdom* and whose ordinary business involves him in engaging in certain activities; and
  - (3) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion in relation to *investments* generally or in relation to any class of *investments* (including mortgages) to which the arrangements relate. Other exclusions

4.5.19G The *Regulated Activities Order* contains a number of other exclusions which have the effect of preventing certain activities from amounting to *regulated activities* within article 25. These are referred to in *AUTH* App 4.10 (Exclusions applying to more than one regulated activity). There is also an exclusion where both the arranger and borrower are overseas, which is referred to in *AUTH* App 4.11 (Link between activities and the United Kingdom).

## 4.6 Advising on regulated mortgage contracts

### Definition of ‘advising on regulated mortgage contracts’

4.6.1G Article 53A of the *Regulated Activities Order* (Advising on regulated mortgage contracts) makes *advising on regulated mortgage contracts* a *regulated activity*. This covers advice which is both:

- (1) given to a *person* in his capacity as borrower or potential borrower; and
- (2) advice on the merits of the borrower:
  - (a) entering into a particular *regulated mortgage contract* (whether or not the entering into is done by way of business); or
  - (b) varying the terms of a *regulated mortgage contract* entered into by the borrower on or after 31 October 2004 in such a way as to vary the borrower’s obligations under the contract.

4.6.2G In the *FSA's* view, the circumstances in which a *person* is giving advice on the borrower varying the terms of a *regulated mortgage contract* so as to vary his obligations under the contract include (but are not limited to) where the advice is about:

- (1) the borrower obtaining a further advance secured on the same land as the original loan; or
- (2) a rate switch or a product switch (that is, where the borrower does not change lender but changes the terms for repayment from, say, a variable rate of interest to a fixed rate of interest or from one fixed rate to another); or
- (3) the borrower transferring from a repayment mortgage to an interest-only mortgage or the reverse situation.

Although advice on varying the terms of a *regulated mortgage contract* is not a *regulated activity* if the contract was entered into before 31 October 2004, there may be instances where the variation to the old contract is so fundamental that it amounts to entering into a new *regulated mortgage contract* (see *AUTH App 4.4.4G* and *AUTH App 4.4.13G(2)*). In that case, giving the advice would be a *regulated activity*.

4.6.3G For advice to fall within article 53A as set out in *AUTH App 4.6.1G* it must:

- (1) relate to a particular mortgage contract (that is, one that the borrower may enter into or, in the case of advice on a variation, one that he has already entered into);
- (2) be given to a *person* in his capacity as a borrower or potential borrower;
- (3) be advice (that is, not just information); and
- (4) relate to the merits of the borrower entering into, or varying the terms of, the contract.

4.6.4G Each of these aspects is considered in greater detail in *AUTH App 4.6.5G* (Advice must relate to a particular regulated mortgage contract) to *AUTH App 4.6.17G* (Advice must relate to the merits (of entering into as borrower or varying)). Additionally, the following should be borne in mind:

- (1) a *person* may be carrying on *regulated activities* involving arranging, whether or not that *person* is *advising on regulated mortgage contracts* (see *AUTH App 4.5*);
- (2) the provision of advice or information may involve the *communication* of a *financial promotion* (see *AUTH App 1* (Financial promotion and related activities)); and
- (3) *AUTH App 1.25* ((Advice must relate to an investment which is a security or contractually based investment) to *AUTH App 1.29* (Advice must relate to the merits (of buying or selling a particular investment))

will be relevant to any *person* who may be advising on other forms of investment at the same time as he advises on *regulated mortgage contracts*; this includes, for example, a *person* advising on the merits of using a particular endowment policy or *ISA* as the means for repaying the capital under an *interest-only mortgage*.

**Advice must relate to a particular regulated mortgage contract**

4.6.5G Advice will come within the *regulated activity* in article 53A of the *Regulated Activities Order* only if it relates to a particular *regulated mortgage contract* (or several particular *regulated mortgage contracts*). The question is whether a recommendation is made to a *customer* which either explicitly or implicitly steers the *customer* to a particular *regulated mortgage contract* because of its features, such as length or type of interest rate or any other essential feature.

4.6.6G Advice would not relate to a particular contract if it consisted of a recommendation that a *person* should take out a mortgage with ABC building society without (expressly or by implication) specifying what kind of mortgage, or if it did not identify any particular lender. *AUTH* App 4.6.7G identifies several typical recommendations and indicates whether they will be regulated as advice under article 53A.

4.6.7G Table Typical recommendations and whether they will be regulated as advice under article 53A of the Regulated Activities Order

This table belongs to *AUTH* App 4.6.5G

<b>Regulated or not?</b>	
I recommend you take out the ABC Building Society 2 year fixed rate mortgage at 5%.	Yes. This is advice which steers the borrower in the direction of a particular mortgage which the borrower could enter into.
I recommend you do not take out the ABC Building Society 2 year fixed rate mortgage at 5%.	Yes. This is advice which steers the borrower away from a particular mortgage which the borrower could have entered into.
I recommend that you take out either the ABC Building Society 2 year fixed rate mortgage at 5% or the XYZ Bank standard variable rate mortgage.	Yes. This is advice which steers the borrower in the direction of more than one particular mortgage which the borrower could enter into.
I recommend you take out (or do not take	This will depend on the

<p>out) an ABC Building Society fixed rate mortgage.</p>	<p>circumstances. If, for example, the society only offers one such mortgage, this would be a recommendation intended implicitly to steer the borrower in the direction of that particular mortgage which the borrower could enter into and therefore would be advice.</p>
<p>I suggest you take out (or do not take out) a mortgage with ABC Building Society.</p>	<p>No. This is not advice which steers the borrower in the direction of a particular mortgage which the borrower could enter into. However, if the society only offers one mortgage, this would be a recommendation intended implicitly to steer the borrower in the direction of that particular mortgage which the borrower could enter into and therefore would be advice.</p>
<p>I suggest you change (or do not change) your current mortgage from a variable rate to a fixed rate.</p>	<p>No in respect of the advice about rate type, as this does not steer the borrower in the direction of a particular mortgage which the borrower could enter into.</p> <p>Yes in respect of the advice about varying the terms of the particular mortgage that the borrower had already entered into.</p>
<p>I suggest you take out (or do not take out) a variable rate mortgage.</p>	<p>No. This is not advice which steers the borrower in the direction of a particular mortgage which the borrower could enter into.</p>
<p>I recommend you take out (or do not take</p>	<p>No. This is not advice which</p>

out) a mortgage.	steers the borrower in the direction of a particular mortgage which the borrower could enter into.
I would always recommend buying a house and taking out a mortgage as opposed to renting a property.	No. This is an example of generic advice which does not steer the borrower in the direction of a particular mortgage that he could enter into.
I recommend you do not borrow more than you can comfortably afford.	No. This is an example of generic advice.
If you are looking for flexibility with your mortgage I would recommend you explore the possibilities of either a flexible mortgage or an off-set mortgage. There are a growing number of lenders offering both.	No. This is an example of generic advice

4.6.8G Generic or general advice will not fall under article 53A. Examples of generic advice are shown in *AUTH* App 4.6.7G.

4.6.9G In the *FSA's* view, guiding a *person* through scripted questions or a decision tree should not, of itself, involve advice within the meaning of article 53A (it should be generic advice). But the combination of advice, which in isolation may properly be considered generic, with the identification of a particular or several particular *regulated mortgage contracts* may well, in the *FSA's* view, cause the *person* to be *advising on regulated mortgage contracts*; the *FSA* considers that it is necessary to look at the process as a whole; this is considered in more detail, in the context of scripted questioning, in *AUTH* App 4.6.22G (Scripted questioning (including decision trees)).

**Advice given to a person in his capacity as a borrower or potential borrower**

4.6.10G For the purposes of article 53A, advice must be given to or directed at someone who is acting as borrower or potential borrower. As indicated in *AUTH* App 4.4.2G (Which borrowers?), this means the individual or trustee to whom the credit has been provided by the lender or who is looking to obtain the credit on the security of his property. Advice given to a *body corporate* will not generally be caught because the advice will not concern a *regulated*

*mortgage contract*, as defined. But this does not apply where the *body corporate* is acting as trustee.

4.6.11G Article 53A will not, for example, apply where advice is given to *persons* who receive it as:

- (1) a lender under or administrator of a *regulated mortgage contract*; or
- (2) an adviser who may use it to inform advice given by him to others; or
- (3) a journalist or broadcaster; or
- (4) an agent of a borrower unless appointed as the borrower's attorney and therefore entering into the *regulated mortgage contract* as agent (or proxy) for the borrower.

4.6.12G Advice will still be covered by article 53A even though it may not be given to or directed at a particular borrower (for example advice given in a periodical publication or on a website).

#### **Advice or information**

4.6.13G In the *FSA*'s view, advice requires an element of opinion on the part of the adviser which steers or is intended to steer a borrower or potential borrower in the direction of one or more particular mortgages. In effect, it is a recommendation as to a course of action. Information on the other hand, involves objective statements of facts or figures.

4.6.14G In general terms, simply giving balanced and neutral information without making any comment or value judgement on its relevance to decisions which a borrower may make is not advice.

4.6.15G Information relating to entering into *regulated mortgage contracts* may often involve one or more of the following:

- (1) an explanation of the terms and conditions of a *regulated mortgage contract*, whether given orally or in writing or by providing leaflets and brochures;
- (2) a comparison of the features and benefits of one *regulated mortgage contract* with another;
- (3) the production of scripted questions for the borrower to use in order to exclude options that would fail to meet his requirements; such questions may often go on to identify a range of *regulated mortgage contracts* with characteristics that appear to meet the borrower's requirements and to which he might wish to give detailed consideration (scripted questioning is considered in more detail in *AUTH* App 4.6.21G to *AUTH* App 4.6.25G (Scripted questioning (including decision trees)));
- (4) tables that compare the interest rates and other features of different mortgages;

- (5) leaflets or illustrations that help borrowers to decide which type of mortgage to take out;
- (6) the provision, in response to a request from a borrower who has identified the main features of the type of mortgage he seeks, of several leaflets together with an indication that all the *regulated mortgage contracts* described in them have those features.

4.6.16G In the *FSA*'s opinion, however, such information is likely take on the nature of advice if the circumstances in which it is provided give it the force of a recommendation as described in *AUTH* App 4.6.10G. Examples of situations where information provided by a *person* ('P') are likely to take the form of advice are given below.

- (1) P provides information on a selected, rather than balanced and neutral, basis that would tend to influence the decision of the borrower. This may arise where P offers to provide information about mortgages that contain features specified by the borrower but then exercises discretion as to which mortgages to offer to the borrower.
- (2) P, as a result of going through the sales process, discusses the merits of one *regulated mortgage contract* over another, resulting in advice to enter into or not enter into a particular one.

**Advice must relate to the merits (of entering into as borrower or varying)**

4.6.17G Advice under article 53A must relate to the pros or cons of *entering into a regulated mortgage contract* as borrower.

4.6.18G A neutral and balanced explanation of the implications under a *regulated mortgage contract* of, for example, exercising certain rights or failing to make interest payments on time, need not, itself, involve advice on the merits of entering into that contract or varying its terms.

4.6.19G Neither does advice on the merits of using a particular mortgage broker or adviser in his capacity as such amount to advice for the purpose of article 53A. It is not advice on the merits of *entering into* or varying the terms of a *regulated mortgage contract*.

4.6.20G Without explicit or implicit advice on the merits of entering into as borrower or varying the terms of a *regulated mortgage contract*, advice will not fall under article 53A if it is advice on the likely meaning of uncertain provisions in a *regulated mortgage contract* or on how to complete an application form.



## Scripted questioning (including decisions trees)

- 4.6.21G Scripted questioning involves using any form of sequenced questions in order to extract information from a *person* with a view to facilitating the selection by that *person* of a mortgage or other product that meet his needs. A decision tree is an example of scripted questioning. The process of going through the questions will usually narrow down the range of options that are available. Scripted questions must be prepared in advance of their actual use.
- 4.6.22G Undertaking the process of scripted questioning gives rise to particular issues concerning advice. These mainly involve two aspects of this *regulated activity*. These are that advice must relate to a particular *regulated mortgage contract* (see *AUTH* App 4.6.5G) and the distinction between information and advice (see *AUTH* App 4.6.13G). Whether or not scripted questioning in any particular case is *advising on regulated mortgage contracts* will depend on all the circumstances. If the process involves identifying one or more particular *regulated mortgage contracts* then, in the *FSA*'s view, to avoid *advising on regulated mortgage contracts*, the critical factor is likely to be whether the process is limited to, and likely to be perceived by the borrower as, assisting the borrower to make his own choice of product which has particular features which the borrower regards as important. The questioner will need to avoid providing any judgement on the suitability of one or more products for the borrower. See also *AUTH* App 4.6.4G for other matters that may be relevant.
- 4.6.23G The potential for variation in the form, content and manner of scripted questioning is considerable, but there are two broad types. The first type involves providing questions and answers which are confined to factual matters (for example, whether a borrower wishes to pay a fixed or variable rate of interest or the size of deposit available). In the *FSA*'s view, this does not of itself amount to *advising on regulated mortgage contracts*, as it involves the provision of information rather than advice. There are various possible scenarios, including the following:
- (1) the questioner may go on to identify several *regulated mortgage contracts* which match features identified by the scripted questioning; provided these are presented in a balanced and neutral way (for example, they identify all the matching *regulated mortgage contracts*, without making a recommendation as to a particular one) this need not of itself involve *advising on regulated mortgage contracts*;
  - (2) the questioner may go on to advise the borrower on the merits of one particular *regulated mortgage contract* over another; this would be *advising on regulated mortgage contracts*;
  - (3) the questioner may, before or during the course of the scripted questioning, give a recommendation or opinion which influences the choice of mortgage contract and, following the scripted questioning, identify one or more particular *regulated mortgage contracts*; the key issue then is whether the advice can be said to relate to a particular *regulated mortgage contract* (see further *AUTH* App 4.6.22G)).

- 4.6.24G The second type of scripted questioning involves providing questions and answers incorporating opinion, judgement or recommendations (for example, whether a repayment mortgage or interest-only mortgage is a better option or whether interest rates are likely to rise). There are various possible scenarios, including the following:
- (1) the scripted questioning may not lead to the identification of any particular *regulated mortgage contract*; in this case, the questioner has provided advice, but it is generic advice and does not amount to *advising on regulated mortgage contracts*;
  - (2) the scripted questioning may lead to the identification of one or more particular *regulated mortgage contracts*; the key issue then is whether the advice can be said to relate to a particular *regulated mortgage contract* (see further *AUTH* App 4.6.22G).

4.6.25G In the scenarios identified in *AUTH* 4.6.23G(3) and *AUTH* 4.6.24G(2), the *FSA* considers that it is necessary to look at the process and outcome of scripted questioning as a whole. It may be that the element of advice incorporated in the questioning may properly be viewed as generic advice if it were considered in isolation. But, although the actual advice may be generic, the process has ended in identifying one or more particular *regulated mortgage contracts*. The combination of the generic advice and the identification of a particular or several particular *regulated mortgage contracts* to which it leads may well, in the *FSA*'s view, cause the questioner to be *advising on regulated mortgage contracts*. Factors that may be relevant in deciding whether the process involves *advising on regulated mortgage contracts* may include:

- (1) any representations made by the questioner at the start of the questioning relating to the service he is to provide;
- (2) the context in which the questioning takes place;
- (3) the stage in the questioning at which the opinion is offered and its significance;
- (4) the role played by any questioner who guides a *person* through the scripted questions;
- (5) the outcome of the questioning (whether particular *regulated mortgage contracts* are highlighted, how many of them, who provides them, their relationship to the questioner and so on); and
- (6) whether the scripted questions and answers have been provided by, and are clearly the responsibility of, an unconnected third party (for example, the *FSA*), and all that the questioner has done is help the borrower understand what the questions or options are and how to determine which option applies to his particular circumstances.

## **Medium used to give advice**

- 4.6.26G With the exception of periodicals, broadcasts and other news or information services (see *AUTH* App 4.6.30G (Exclusion: periodical publications, broadcasts and websites)) the medium used to give advice should make no material difference to whether or not the advice is caught by article 53A.
- 4.6.27G Advice can be provided in many ways including:
- (1) face to face;
  - (2) orally to a group;
  - (3) by telephone;
  - (4) by correspondence (including e-mail);
  - (5) in a publication, broadcast or website; and
  - (6) through the provision of an interactive software system.
- 4.6.28G Taking electronic commerce as an example, the use of electronic decision trees does not present any novel problems. The same principles apply as with a paper version (see *AUTH* App 4.6.21G to *AUTH* App 4.6.25G (Scripted questioning (including decision trees))).
- 4.6.29G Advice in publications, broadcasts and websites is subject to a special regime – see *AUTH* App 4.6.30G (Exclusion: periodical publications, broadcasts and websites) and *AUTH* 7 (Periodical publications, news services and broadcasts: applications for certification).

## **Exclusion: periodical publications, broadcasts and websites**

- 4.6.30G The main exclusion from *advising on regulated mortgage contracts* relates to advice given in periodical publications, regularly updated news and information services and broadcasts (article 54 of the *Regulated Activities Order* (Advice given in newspapers etc)). The exclusion applies if the principal purpose of any of these is neither to give advice of the kind to which article 53 (Advising on investments) or article 53A applies nor to lead or enable *persons* to:
- (1) acquire or dispose of securities or contractually based investments; or
  - (2) enter as borrower *into* regulated mortgage contracts *or vary the terms of regulated mortgage contracts* entered into by such *persons* as the borrower.

This is explained in greater detail, together with the provisions on the granting of certificates, in *AUTH* 7 (Periodical publications, news services and broadcasts: applications for certification).

## **Exclusion: advice in the course of administration by authorised person**

- 4.6.31G Article 54A of the *Regulated Activities Order* excludes from *advising on regulated mortgage contracts* certain activities of an *unauthorised person* which is taking advantage of the exclusion from *administering a regulated mortgage contract* in article 62 (see *AUTH App 4.8.4G*).

### **Other exclusions**

- 4.6.32G The *Regulated Activities Order* contains a number of other exclusions which have the effect of preventing certain activities from amounting to *advising on regulated mortgage contracts*. These are referred to in *AUTH App 4.10* (Exclusions applying to more than one regulated activity).

## **4.7 Entering into a regulated mortgage contract**

### **Definition of ‘entering into a regulated mortgage contract’**

- 4.7.1G Article 61(1) of the *Regulated Activities Order* makes *entering into a regulated mortgage contract* as lender a *regulated activity*.

### **Exclusions**

- 4.7.2G The *Regulated Activities Order* contains an exclusion which has the effect of preventing certain activities of trustees, nominees and personal representatives from amounting to *entering into a regulated mortgage contract*. This is referred to in *AUTH App 4.10* (Exclusions applying to more than one regulated activity). There is also an exclusion where both the lender and borrower are overseas, which is referred to in *AUTH App 4.11* (Link between activities and the United Kingdom).

### **Transfer of lending obligations**

- 4.7.3G A *person* who provides credit to a borrower under a *regulated mortgage contract* will *enter into a regulated mortgage contract*, even if the lending obligations under that contract are subsequently transferred to a third party. Consequently, a *person* who acts as a so-called ‘correspondent lender’ in the mortgage market will need to seek *authorisation*.

## **4.8 Administering a regulated mortgage contract**

### **Definition of ‘administering a regulated mortgage contract’**

- 4.8.1G Article 61(2) of the *Regulated Activities Order* makes *administering a regulated mortgage contract* a *regulated activity* ‘where the contract was entered into by way of business’ on or after 31 October 2004.
- 4.8.2G The definition does not include administration of a *regulated mortgage contract* which was not entered into by way of business. See *AUTH App 4.3.3G* for a discussion of the ‘by way of business’ test. The definition also does not include administration of a mortgage which was entered into before 31 October 2004. See, however, *AUTH App 4.4.4G* and *AUTH App 4.4.13G* for a discussion of how a variation of a mortgage contract entered into before

31 October 2004 could amount to the entry into a new *regulated mortgage contract* after 31 October 2004.

4.8.3G Under article 61(3)(b) of the *Regulated Activities Order*, *administering a regulated mortgage contract* is defined as either or both of:

- (1) notifying the borrower of changes in interest rates or payments due under the contract, or of other matters of which the contract requires him to be notified; and
- (2) taking any necessary steps for the purposes of collecting or recovering payments due under the contract from the borrower;

but does not include merely having or exercising a right to take action to enforce the *regulated mortgage contract*, or to require that action is or is not taken.

**Exclusion: arranging administration by authorised persons**

4.8.4G Article 62 of the *Regulated Activities Order* provides that a *person* who is not an *authorised person* does not *administer a regulated mortgage contract* if he:

- (1) arranges for a *firm* with *permission* to *administer a regulated mortgage contract* (a '*mortgage administrator*') to administer the contract; or
- (2) administers the *regulated mortgage contract* itself, provided that the period of administration is no more than one month after the arrangement in (1) has come to an end.

4.8.5G This exclusion may be of particular interest to a *special purpose vehicle* which administers *regulated mortgage contracts* transferred to it as part of a *securitisation* transaction.

4.8.6G If an *unauthorised administrator* makes arrangements for a *mortgage administrator* to administer its *regulated mortgage contracts*, the exclusion may cease to be available because the *mortgage administrator* ceases to have the required *permission*, or because the arrangement is terminated. The exclusion gives the *unauthorised administrator* a one-month grace period during which it may administer the contracts itself. If the period of administration exceeds one month, the *unauthorised administrator* will be in breach of the *general prohibition*, and the *FSA* may take proceedings in respect of the breach. However:

- (1) under section 23(3) of the *Act*, it is a defence in such proceedings for a *person* to show that 'he took all reasonable precautions and exercised all due diligence to avoid committing the offence';
- (2) the *FSA* would consider whether a *person* has taken 'all reasonable precautions and exercised all due diligence' on a case by case basis; what is reasonable is a matter for the senior management of the *unauthorised administrator* to decide in each case, taking account of, for example, the financial standing of the *mortgage administrator* and its ability to perform its obligations under the administration contract;

- (3) factors that the *FSA* would take into account in assessing whether an *unauthorised* administrator has taken ‘all reasonable precautions and exercised all due diligence’ would include:
  - (a) the level of the *person’s* preparedness for a *mortgage administrator* to cease providing administration services; and
  - (b) the reasons for, and the circumstances of, the termination of arrangements with a *mortgage administrator*;
- (4) whether any agreement made by an *unauthorised* administrator would be enforceable under section 26 of the *Act* (Agreements made by unauthorised persons) depends on whether the court is satisfied that this would be just and equitable; in this context, the court may have regard to the extent to which the administrator has complied with the *FSA’s guidance*.

#### **Exclusion: administration pursuant to agreement with authorised person**

4.8.7G Under article 63 of the *Regulated Activities Order*, a *person* who is not an *authorised person* does not *administer a regulated mortgage contract* if he administers the contract under an agreement with a *firm* with *permission* to *administer a regulated mortgage contract*. A *firm* with *permission* to *administer a regulated mortgage contract* may thus *outsource* or delegate the administration function to an *unauthorised* third party. A *firm* that proposes to do this should however note, as set out in *SYSC 3.2.4G(1)*, that the *FSA* will continue to hold it responsible for the way in which the administration is carried on.

#### **Other exclusions**

4.8.8G The *Regulated Activities Order* contains an exclusion which has the effect of preventing certain activities of trustees, nominees and personal representatives from amounting to *administering regulated mortgage contracts*. This is referred to in *AUTH App 4.10* (Exclusions applying to more than one regulated activity). There is also an exclusion where both the administrator and borrower are overseas, which is referred to in *AUTH App 4.11* (Link between activities and the United Kingdom).

#### **4.9 Agreeing to carry on a regulated activity**

4.9.1G Under article 64 of the *Regulated Activities Order* (Agreeing to carry on specified kinds of activity), in addition to the *regulated activities* of *arranging (bringing about)*, *making arrangements with a view to*, *advising on*, *entering into* and *administering regulated mortgage contracts*, agreeing to do any of these things is itself a *regulated activity*. In the *FSA’s* opinion, this activity concerns the entering into of a legally binding agreement to provide the services that it concerns. So a *person* is not carrying on a *regulated activity* involving agreeing merely because he makes an offer to do so.

4.9.2G To the extent that an exclusion applies in relation to a *regulated activity*, then ‘agreeing’ to carry on an activity within the exclusion will not be a *regulated activity*. This is the effect of article 4(3) of the *Regulated Activities Order*.

#### 4.10 Exclusions applying to more than one regulated activity

##### **Exclusion: Activities carried on in the course of a profession or non-investment business**

4.10.1G The exclusion in article 67 of the *Regulated Activities Order* (Activities carried on in the course of a profession or non-investment business) applies to the *regulated activities* of *arranging (bringing about), making arrangements with a view to and advising on regulated mortgage contracts*. (*AUTH* App 4.14 contains further *guidance* on mortgage activities carried on by *professional firms*.)

4.10.2G *Arranging (bringing about), making arrangements with a view to and advising on regulated mortgage contracts* are excluded if they are carried on by a *person* in the course of carrying on a profession or business (other than a *regulated activity*). This is the case if it may reasonably be regarded as necessary for him to make the arrangements or give the advice in order to provide his professional or other services and he is not separately paid for making the arrangements or giving the advice.

4.10.3G In the *FSA*’s view, for arranging or advice to be a necessary part of other services it must, as a general rule, be the case that it is not possible for the other services to be provided unless the arranging or advising are also provided.

4.10.4G Situations where this exclusion might apply, in the *FSA*’s view, are set out below:

- (1) Advice by solicitors: the provision of legal services may involve a solicitor advising his client on the legal effects and consequences of entering into a particular *regulated mortgage contract*. To the extent that this may involve advice on the merits of entering into the contract it is likely to be a necessary part of the legal advice. But it would not be necessary for the solicitor to go on to recommend that his client would be better to enter into a different particular *regulated mortgage contract*.
- (2) Advice by licensed conveyancers: As a necessary part of conveyancing work and under their duty of care to the client, a licensed conveyancer may state that the mortgage the client has applied for is right for them or not. If the client has already applied for a mortgage and the conveyancer just says that their choice is right or wrong but does not recommend alternatives, then that advice is likely to be excluded. But if the conveyancer recommends an alternative then that advice is unlikely to be excluded.
- (3) Conveyancing as arranging: The provision of pure conveyancing services (whether performed by a solicitor or a licensed conveyancer)

will, themselves, be arrangements within the scope of article 25A. So they will be excluded under article 67. But if the client does not yet have a mortgage, an introduction to or other arrangement involving a lender is unlikely to be a necessary part of conveyancing services.

- (4) Debt counselling services: The provision of debt counselling services may involve the counsellor advising his client on the merits of varying the terms of an existing *regulated mortgage contract* and, in certain cases, assisting a distressed borrower in corresponding with a lender. Such advice and arrangements are likely to be a necessary part of the debt counselling services. But it would not be a necessary part of those services for the counsellor to offer advice on the merits of his client entering into a new particular *regulated mortgage contract*.

**Exclusion: Trustees, nominees and personal representatives**

4.10.5G There are exclusions that apply, in certain circumstances, in relation to each of the *regulated mortgage activities* if the *person* carrying on the activity is acting in the capacity of trustee or personal representative. Article 66 of the *Regulated Activities Order* (Trustees, nominees and personal representatives) sets out the circumstances in which the exclusions apply. The terms of these differ slightly depending on the *regulated activity*.

4.10.6G For each of the *regulated activities* of *arranging (bringing about), making arrangements with a view to* and *advising on regulated mortgage contracts*, the exclusions apply if the trustee or personal representative is acting in that capacity and:

- (1) the arrangements he makes concern the entering into or variation of *regulated mortgage contracts* and the contracts are to be entered into or varied either by himself and a fellow trustee or personal representative or by the beneficiary under the trust, will or estate on behalf of which he is acting; or
- (2) the advice is given to such trustees or personal representatives or beneficiaries.

4.10.7G For each of the *regulated activities* of *entering into a regulated mortgage contract* and *administering a regulated mortgage contract*, the exclusions apply if the trustee or personal representative is acting in that capacity and the borrower is a beneficiary under the trust, will or estate on behalf of which he is acting.

4.10.8G In every case, the trustee or personal representative must not receive any remuneration that is additional to any he receives for acting in his capacity as trustee or personal representative. But a *person* is not to be regarded as receiving additional remuneration merely because his remuneration as trustee or personal representative is calculated by reference to time spent.



## 4.11 Link between activities and the United Kingdom

### Introduction

4.11.1G Section 19 of the *Act* (The general prohibition) provides that the requirement to be *authorised* under the *Act* only applies in relation to *regulated activities* which are carried on ‘in the *United Kingdom*’. In many cases, it will be quite straightforward to identify where an activity is carried on. But when there is a cross-border element, for example because a borrower is outside the *United Kingdom* or because some other element of the activity happens outside the *United Kingdom*, the question may arise as to where the activity is carried on. This section describes the legislation that is relevant to this question and gives the *FSA*’s views on various scenarios.

4.11.2G Even if a *person* concludes that he is not carrying on a *regulated activity* in the *United Kingdom*, he will need to ensure that he does not contravene other provisions of the *Act* that apply to *unauthorised persons*. These include the controls on *financial promotion* (section 21 (Financial promotion) of the *Act*) (see *AUTH* App 1 (Financial promotion and related activities)), and on giving the impression that a *person* is *authorised* (section 24 (False claims to be authorised or exempt)).

### Legislative provisions: definition of “regulated mortgage contract”

4.11.3G A contract is only a *regulated mortgage contract* if the land is in the *United Kingdom* (see *AUTH* App 4.4.5G (Land in the United Kingdom)).

### Legislative provisions: section 418 of the Act

4.11.4G Section 418 of the *Act* deals with the carrying on of *regulated activities* in the *United Kingdom*. It extends the meaning that ‘carry on a *regulated activity* in the *United Kingdom*’ would ordinarily have by setting out additional cases. The *Act* states that in these cases a *person* who is carrying on a *regulated activity* but would not otherwise be regarded as carrying on the activity in the *United Kingdom* is, for the purposes of the *Act*, to be regarded as carrying on the activity in the *United Kingdom*.

4.11.5G For the purposes of *regulated mortgage activities*, sections 418(2), (4), (5), (5A) and (6) are relevant, as follows:

- (1) Section 418(2) refers to a case where a *UK-based person* carries on a *regulated activity* in another *EEA State* in the exercise of rights under a *Single Market Directive*. The only *Single Market Directive* which is relevant to mortgages is the *Banking Consolidation Directive*. In the *FSA*’s view, the *regulated mortgage activities* of *entering into* or *administering a regulated mortgage contract* or agreeing to carry on either of these activities may be carried on by a *credit institution* using the passport under that directive.
- (2) Section 418(4) refers to the case where a *UK-based person* carries on a *regulated activity* and the day-to-day management of the activity is the responsibility of an establishment in the *United Kingdom*.

- (3) Section 418(5) refers to the case where a *regulated activity* is carried on by a *person* who is not based in the *United Kingdom* but is carried on from an establishment maintained by him in the *United Kingdom*.
- (4) Section 418(5A) refers to the case where an *electronic commerce activity* is carried on with or for a *person* in an *EEA State* from an *establishment* in the *United Kingdom*. See further *AUTH App 4.11.21G* (E-Commerce Directive); and
- (5) Section 418(6) makes it clear that for the purposes of sections 418(2) to (5A), it is irrelevant where the *person* with whom the activity is carried on is situated.

#### **Legislative provisions: overseas persons exclusion**

4.11.6G The exclusions in article 72(5A) to (5F) of the *Regulated Activities Order* (Overseas persons) provide that an *overseas person* does not carry on the *regulated activities* of:

- (1) *arranging (bringing about) or making arrangements with view to a regulated mortgage contract;*
- (2) *entering into a regulated mortgage contract; or*
- (3) *administering a regulated mortgage contract;*

if the borrower (and each of them, if more than one) is an individual and is normally resident overseas. In the case of arranging a variation of, or administration of, an existing *regulated mortgage contract*, each borrower must be an individual who was normally resident overseas when he entered into the contract. In the *FSA's* view, normal residence for the purposes of this exclusion envisages physical presence with a degree of continuity, making allowance for occasional temporary absences (e.g. holiday). An *overseas person* under article 3 of the *Regulated Activities Order* (Interpretation) is a *person* who carries on certain *regulated activities* albeit not from a permanent place of business maintained by him in the *United Kingdom*.

4.11.7G An *overseas person* might advise a *person* in the *United Kingdom* on an *endowment assurance* at the same time as advising on a *regulated mortgage contract*. If so, whilst the *overseas person* exclusion in article 72(5) will apply in relation to the advice on the *endowment assurance*, there will be no 'overseas persons exclusion' for the advice on the *regulated mortgage contract*.

#### **Territorial scenarios: general**

4.11.8G The *FSA's* view of the effect of the *Act* and *Regulated Activities Order* in various territorial scenarios is set out in the remainder of this section. In those scenarios:

- (1) the term "service provider" is used to describe a *person* carrying on any of the *regulated mortgage activities*;

- (2) the term “borrower” refers to a borrower who is an individual and not a trustee; the position of a borrower acting as a trustee is not considered; and
- (3) it is assumed that the activity is not an *electronic commerce activity* (as to which, see AUTH App 4.11.21G (E-Commerce Directive)).

AUTH App 4.11.9G contains a simplified tabular summary of those views, which should be used only in conjunction with the more detailed analysis.

4.11.9G Table Simplified summary of the territorial scope of the *regulated mortgage activities*, to be read in conjunction with the rest of this section. This table belongs to AUTH App 4.11.8G

		Individual borrower resident and located:	
		in the UK	outside the UK
Service provider carrying on regulated activity from establishment:	in the UK	✓	✓
	outside the UK	✓	X

✓= *authorisation* or exemption required

X= *authorisation* or exemption not required

### Service provider in the United Kingdom

4.11.10G Where a *person* is carrying on any of the *regulated mortgage activities* from an establishment maintained by him in the *United Kingdom*, that *person* will be ‘carrying on a *regulated activity* in the *United Kingdom*’. The location and residence of the borrower is irrelevant. That is the practical effect of sections 418(4), (5) and (6) of the *Act*.

4.11.11G There may also be situations where a lender, who does not maintain an *establishment* in the *United Kingdom*, provides services in the *United Kingdom*. For instance, a lender might attend a property exhibition in the *United Kingdom* at which he sets up a loan with a borrower. A lender might also attend the offices of its UK-based lawyers, or appoint them as its agent, to enter into a contract with a borrower. In these cases, the overseas lender would only be carrying on a *regulated activity* in the *United Kingdom* if he subsequently *enters into a regulated mortgage contract* with a UK resident. This is because arrangements made with borrowers at the exhibition would be subject to the exclusion in article 28 of the *Regulated Activities Order* (Arranging transactions to which the arranger is a party) (see AUTH 4.5.7G). As regards *entering into a regulated mortgage contract* with a borrower resident overseas, this would be subject to the *overseas persons* exclusion.

### Service provider overseas: general

4.11.12G If a service provider is overseas, the question of whether that *person* is carrying on a *regulated activity* in the *United Kingdom* will depend upon:

- (1) the type of *regulated activity* being carried on;
- (2) section 418 of the *Act*;
- (3) the residence and location of the borrower;
- (4) the application of the *overseas persons* exclusion in article 72(5A) to (5F) of the *Regulated Activities Order*; and
- (5) whether the service provider is carrying on an *electronic commerce activity*.

The factors in (1), (3) and (4) are considered in relation to each *regulated activity* in *AUTH App 4.11.13G* to *AUTH App 4.11.20G*. The factor in (5) is considered in *AUTH App 4.11.21G*.

### **Service provider overseas: arranging regulated mortgage contracts**

4.11.13G When a *person* is *arranging (bringing about) regulated mortgage contracts* or *making arrangements with a view to regulated mortgage contracts* from overseas, the question of whether he will be carrying on *regulated activities* in the *United Kingdom* will depend on the relevant circumstances. In the *FSA's* view factors to consider include:

- (1) the territorial limitation in the definition of *regulated mortgage contract* so that regulation only applies if the land is in the *United Kingdom*;
- (2) the *overseas persons* exclusion in article 72(5A) to (5C); and
- (3) where the arrangements are in fact made.

4.11.14G In the *FSA's* view:

- (1) if the borrower is *normally resident* in the *United Kingdom*, the clear territorial limitation in the definition of *regulated mortgage contract* carries most weight in determining where regulation should apply; it is likely that the arranger will be carrying on *regulated activities* in the *United Kingdom*;
- (2) if the borrower is *normally resident* overseas, the arrangements are excluded by the *overseas persons* exclusion.

In the case of *arranging (bringing about) regulated mortgage contracts*, the *normal residence* of the borrower at the time the arrangements are made is the determining factor, except in the case of *arranging (bringing about) a variation of a contract*, in which case it is the *normal residence* of the borrower at the time that the *regulated mortgage contract* was entered into. In the case of *making arrangements with a view to regulated mortgage contracts*, the *normal residence* of the borrower at the time he participates in the arrangements is the determining factor.

### **Service provider overseas: advising on regulated mortgage contracts**

4.11.15G In the *FSA's* view, *advising on regulated mortgage contracts* is carried on where the borrower receives the advice. Accordingly:

- (1) if the borrower is located in the *United Kingdom*, a *person* advising that borrower on *regulated mortgage contracts* is carrying on a *regulated activity* in the *United Kingdom*; but
- (2) if the service provider and borrower are both located overseas, the *regulated activity* is not carried on in the *United Kingdom*.

### **Service provider overseas: entering into a regulated mortgage contract**

4.11.16G The effect of article 72(5D) of the *Regulated Activities Order* is that an *overseas person* does not carry on the *regulated activity* of *entering into a regulated mortgage contract* if the borrower is resident overseas at the time the contract is entered into.

4.11.17G In the *FSA's* view, in circumstances other than those excluded by article 72(5D) of the *Regulated Activities Order*, an overseas lender is likely to carry on the *regulated activity* of *entering into regulated mortgage contracts* in the *United Kingdom*. This is because of:

- (1) the territorial limitation in the definition of *regulated mortgage contract* so that regulation applies only if the land is in the *United Kingdom*;
- (2) the general principle and practice that contracts relating to land are usually governed by the law of the place where the land is situated;
- (3) practical issues of conveyancing; a lender is likely to use the services of a solicitor or licensed conveyancer operating from the *United Kingdom*, who enters into the *regulated mortgage contract* as agent for the lender in the *United Kingdom*; and
- (4) the existence of the *overseas persons* exclusion in article 72(5D).

### **Service provider overseas: administering a regulated mortgage contract**

4.11.18G The effect of article 72(5E) and (5F) of the *Regulated Activities Order* is that an *overseas person* who administers a *regulated mortgage contract*, where the borrower was resident overseas at the time that the contract was entered into, does not carry on the *regulated activity* of *administering a regulated mortgage contract*.

4.11.19G In the *FSA's* view, in circumstances other than those excluded by article 72(5E) of the *Regulated Activities Order*, an overseas administrator is likely to carry on the *regulated activity* of *administering a regulated mortgage contract* in the *United Kingdom*. This is because:

- (1) the territorial limitation in the definition of *regulated mortgage contract* means that regulation applies only if the land is in the *United Kingdom*;
- (2) when administrators notify borrowers resident in the *United Kingdom* of matters pursuant to a *regulated mortgage contract*, such notification is likely to be carried on in the *United Kingdom*;
- (3) the steps involved in collecting or recovering payments will generally include giving notice to the borrower at his *UK* address;
- (4) legal action to recover sums due under *regulated mortgage contracts* will in many cases require proceedings before courts in the *United Kingdom*, either to enforce *regulated mortgage contracts* subject to the jurisdiction of these courts or to register and enforce judgements obtained elsewhere, in the case of contracts subject to non-*UK* jurisdictions; and
- (5) of the existence of the exclusion in article 72(5E) (Overseas persons).

**Service provider: agreeing to carry on a regulated activity**

4.11.20G In most cases, there will be no preliminary agreement to enter into a *regulated mortgage contract* in advance of entering into the contract itself. Moreover, the exclusions relevant to a *regulated activity* are taken into account to determine whether a *person* is *agreeing to carry on* that *regulated activity*. So, for example, agreeing to arrange *regulated mortgage contracts* in cases where borrower and service provider are overseas, would not be *regulated activities* because the activities themselves are outside the scope of regulation. Otherwise, in the *FSA's* view, the issue of where agreeing to carry on a *regulated activity* takes place will depend on such factors as a contractual analysis of where the agreement is entered into, including where appropriate the general position at common law (see, for example, *AUTH* App 4.11.17).

**E-Commerce Directive**

4.11.21G The *E-Commerce Directive* removes restrictions on the cross-border provision of services by electronic means, introducing a *country of origin* approach to regulation. This requires *EEA States* to impose their requirements on the outward provision of such services and to lift them from inward providers. The *E-Commerce Directive* contains only a few exceptions, termed derogations, from this principle. The *E-Commerce Directive* defines an e-commerce service (termed an *information society service*) as any service, normally provided for remuneration, at a distance, by electronic means, and at the individual request of the recipient of the service. So, for example, it includes services provided over the internet, by solicited e-mail, and interactive digital television. Further *guidance* is contained in the *FSA's* E-Commerce Directive sourcebook (*ECO*).

## **Distance marketing directive**

- 4.11.22G The *FSA* will be responsible for implementing the *Distance Marketing Directive* for those *firms* and activities it regulates. The *FSA* and the Treasury agree that the *Distance Marketing Directive* is intended to operate on a *country of origin* basis, except where a firm is marketing into the *UK* from an establishment in an *EEA State* which has not implemented the Directive.

## **4.12 Appointed representatives**

### **What is an appointed representative?**

- 4.12.1G Section 39 of the *Act* makes provision exempting *appointed representatives* from the need to obtain *authorisation*. An *appointed representative* is a *person* who is a party to a contract with an *authorised person* which permits or requires the *appointed representative* to carry on certain regulated activities. *SUP 12* (Appointed representatives) contains *guidance* relating to *appointed representatives*.

- 4.12.2G A *person* who is an *authorised person* cannot be an *appointed representative* (see section 39(1) of the *Act* (Exemption of appointed representatives)).

### **Business for which an appointed representative is exempt**

- 4.12.3G An *appointed representative* can carry on only those *regulated activities* which are specified in the *Appointed Representatives Regulations*. *Arranging (bringing about), making arrangements with a view to and advising on regulated mortgage contracts* (as well as *agreeing to do so*) will be included in those regulations with effect from 31 October 2004.

### **Persons who are not already appointed representatives**

- 4.12.4G A *person* who is not already an *appointed representative* for *designated investment business* activities, and who may wish to become one in relation to the *regulated activities* of *arranging (bringing about), making arrangements with a view to or advising on regulated mortgage contracts*, can do so. He must be appointed under a written contract by an *authorised person*, who has *permission* to carry on those *regulated activities*, and who accepts responsibility for the *appointed representative's* actions when acting for him. *SUP 12.4* (What must a firm do when it appoints an appointed representative?) and *SUP 12.5* (Contracts: required terms) set out the detailed requirements that must be met for an appointment to be made.

### **Persons who are already appointed representatives**

- 4.12.5G Where a *person* is already an *appointed representative* (in relation to any non-mortgage activities) and he proposes to carry on, with effect from 31 October 2004, any *regulated mortgage activities*, he will need to consider the following matters.

- (1) He must become *authorised* if his proposed mortgage activities include *either entering into a regulated mortgage contract or administering a regulated mortgage contract*. These activities may not be carried on

by *appointed representatives* and the *Act* does not permit any *person* to be exempt for some activities and *authorised* for others. Once *authorised*, the *person* may only carry on the *regulated activities* that are covered by his *permission*. He will therefore need to apply for a *permission* to cover all the *regulated activities* that he proposes to carry on after 31 October 2004.

- (2) If he proposes to carry on the *regulated activities* of *arranging (bringing about), making arrangements with a view to or advising on regulated mortgage contracts*, he may be able to do so as an *appointed representative*. But this will depend on a number of issues:
  - (a) he will need to be appointed by an *authorised person* who is prepared to accept responsibility for the *appointed representative's regulated mortgage activities* when acting for him. The *authorised person* must have *permission* to carry on these *regulated mortgage activities*.
  - (b) if these *regulated mortgage activities* are to be carried on for the same *authorised person* who has already appointed him for his non-mortgage *regulated activities*, the contract between them will need to be amended to reflect the additional activities. Other amendments to the contract may be required.
  - (c) it may be that these *regulated mortgage activities* are to be carried on for a different *person*.
  - (d) if the *regulated mortgage activities* relating to *arranging* are to be limited to making introductions, he may be able to operate within the exclusion for introducers described at *AUTH App 4.5.10G*. This is different from the exclusions for introductions relating to *securities* and *contractually based investments*, which are described at *AUTH App 1.33*.

#### **4.13 Other exemptions**

4.13.1G Certain named persons are exempted by the *Exemption Order* from the need to obtain *authorisation*. The following bodies are exempt in relation to carrying on by them of any of the *regulated mortgage activities*:

- (1) local authorities (paragraph 47 of the Schedule to the *Exemption Order*) but not their *subsidiaries*;
- (2) registered social landlords in England and Wales within the meaning of Part I of the Housing Act 1996 (paragraph 48(a) of the Schedule to the *Exemption Order*) but not their *subsidiaries*;
- (3) housing associations or other bodies corporate registered by Scottish Homes (paragraph 48(b) of the Schedule to the *Exemption Order*) but not their *subsidiaries*;



- (4) The Housing Corporation (paragraph 48(c) of the Schedule to the *Exemption Order*);
- (5) Scottish Homes (paragraph 48(d) of the Schedule to the *Exemption Order*); and
- (6) The Northern Ireland Housing Executive (paragraph 48(e) of the Schedule to the *Exemption Order*).

#### **4.14 Mortgage activities carried on by professional firms**

##### **Introduction**

4.14.1G *Professional firms* (broadly, firms of solicitors, accountants and actuaries) may carry on *regulated mortgage activities* in the course of their usual professional activities. The *regulated activities* of *advising on, arranging (bringing about), making arrangements with a view to and administering regulated mortgage contracts* are those most likely to be relevant.

4.14.2G In the *FSA's* view, the following exclusions are likely, in many cases, to exclude the normal activities of *professional firms* from amounting to *regulated mortgage activities*:

- (1) article 67 of the *Regulated Activities Order* (Activities carried on in the course of a profession or non-investment business), which applies in relation to the advising and arranging activities (see *AUTH* App 4.10.1G);
- (2) article 66 of the *Regulated Activities Order* (Trustees, nominees and personal representatives) which applies in relation to each of the *regulated mortgage activities* (see *AUTH* App 4.10.5G); and
- (3) article 63 of the *Regulated Activities Order* (Administration pursuant to agreement with authorised person) which applies in relation to *administering a regulated mortgage contract* (see *AUTH* App 4.8.7G); in the *FSA's* view, this would exclude steps taken by a solicitor to recover payments due under a *regulated mortgage contract* if his instructions come from an *authorised person* with *permission to administer a regulated mortgage contract*.

4.14.3G In addition, a *professional firm* may, in certain circumstances, be able to use the *Part XX exemption* to avoid any need for *authorisation*. *PROF 2* (Status of exempt professional firm) contains general *guidance* on the *Part XX exemption*. In particular, *PROF 2.1.9G* explains that the Treasury have specified certain *regulated activities* to which the *Part XX exemption* cannot apply in the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities Order 2001 ("the Non-Exempt Activities Order")). *AUTH* App 4.14.4G to *AUTH* 4.14.6G explain which of the *regulated activities* relating to *regulated mortgage contracts* have been so specified.

## **Part XX exemption: arranging regulated mortgage contracts**

- 4.14.4G *Arranging (bringing about) a regulated mortgage contract and making arrangements with a view to a regulated mortgage contract* have not been specified in the Non-Exempt Activities Order. Accordingly, a *professional firm* may carry on these *regulated activities* without *authorisation*, provided the other conditions of the *Part XX exemption* are complied with.

## **Part XX exemption: advising on regulated mortgage contracts**

- 4.14.5G *Advising on regulated mortgage contracts* has been specified in the Non-Exempt Activities Order. However, a *professional firm* is prevented from using the *Part XX exemption* to *advise on regulated mortgage contracts* only if the advice it gives consists of a recommendation. This will be the case if the recommendation is made to an individual to enter into a *regulated mortgage contract* with a lender who would, in entering into the contract, carry on the *regulated activity* of *entering into a regulated mortgage contract*, irrespective of whether the lender is an *authorised* or *exempt person* or would carry on the activity by way of business. However, a *professional firm* is allowed to give advice that involves a recommendation of this kind provided the advice endorses a corresponding recommendation given to the borrower by an *authorised person* who has *permission* to *advise on regulated mortgage contracts* or an *exempt person* whose exemption covers that activity.

## **Part XX exemption: entering into and administering a regulated mortgage contract**

- 4.14.6G *Entering into a regulated mortgage contract and administering a regulated mortgage contract* have both been specified in the Non-Exempt Activities Order. As an exception, a *professional firm* is allowed under the *Part XX exemption* to carry on these *regulated activities* if the firm is acting as a trustee or personal representative. But this is provided that the borrower is a beneficiary under the trust, will or intestacy.

## **4.15 Mortgage activities carried on by ‘packagers’**

### **Introduction**

- 4.15.1G The term ‘packagers’ is used variously to describe a range of intermediaries and their different activities in the mortgage process. Depending on the nature of their activities, these intermediaries may carry on *regulated mortgage activities*. The regulated activities likely to be of most relevance are *arranging (bringing about)* or *making arrangements with a view to regulated mortgage contracts* (described in more detail at *AUTH App 4.5*) and *advising on regulated mortgage contracts* (described in more detail at *AUTH App 4.6*). It is important to note that it is the nature of the relevant activities and not an entity’s own description of itself or its activities that will determine the need for *authorisation*. This section describes the activities of various types of ‘packagers’.

## **Mortgage Clubs (sometimes called mortgage wholesalers)**

4.15.2G So-called ‘mortgage clubs’ or ‘wholesalers’ essentially act as a distribution function for lenders, providing information to intermediaries about current deals available from a range of lenders. They provide information (often through an electronic sourcing system) in a way that helps intermediaries search the market effectively and, as such, do not deal directly with individual borrowers. If only engaged in these activities and without direct contact with individual borrowers, in the *FSA’s* view these entities are unlikely to carry on a *regulated mortgage activity* because they will not:

- (1) *arrange (bring about) regulated mortgage contracts*; their involvement is too indirect to bring about the contract;
- (2) *make arrangements with a view to regulated mortgage contracts*; borrowers will not be participating in the arrangements which they make; or
- (3) *advise on regulated mortgage contracts*, because they provide information not advice and the information is, in any event, directed to intermediaries rather than borrowers.

## **Mortgage packaging companies**

4.15.3G So-called ‘mortgage packaging companies’ may undertake certain parts of the mortgage process for lenders on an outsourced basis, ensuring that a complete set of documentation is collated and sent to the lender. This might include receiving application forms from intermediaries, undertaking credit reference checks and instructing a valuer. Other activities might include a product placement service for other intermediaries who provide product advice or recommendations to their clients. In the *FSA’s* view, mortgage packaging companies engaged in these activities are unlikely to be carrying on a *regulated activity* where they have no direct contact or contract with potential borrowers (for the reasons given in *AUTH* App 4.15.2G).

## **Broker packagers (sometimes called ‘intermediary brokers’)**

4.15.4G The term ‘broker packagers’ is typically used to describe intermediaries who either market their services directly to borrowers or who offer other intermediaries a complete mortgage outsourcing service. They are often involved in the sales and advice process, including helping the borrower complete application forms. In the *FSA’s* view, broker packagers carrying on these types of activity in direct contact with the borrower are likely to be carrying on the *regulated activities of arranging (bringing about) and making arrangements with a view to regulated mortgage contracts*. They may also be *advising on regulated mortgage contracts* depending on the circumstances.

## 4.16 Mortgage activities and securitisation

### Introduction

4.16.1G It is common practice in the mortgage industry for the original lender which makes the loan to pass on ownership of the loan to a third party through *securitisation*. *Securitisation* transactions take different forms, but the essence is that the original lender sells the beneficial interest (with or without the legal interest) in a mortgage portfolio to a *special purpose vehicle* ('*SPV*'), which raises finance to pay for the portfolio by selling its own *securities*. The original lender may (or may not) retain the first legal charge on each mortgage in the portfolio. There may also be other parties to the transaction, for example a security trustee to whom the *SPV* in turn charges the portfolio. Invariably, the *SPV* will also appoint either the original lender or a third party to administer the portfolio on its behalf. This section discusses whether, on a typical *securitisation* transaction, a *SPV* (and similarly a security trustee) carries on a *regulated mortgage activity*.

4.16.2G The government's intention behind the regulatory regime for mortgages was "to ensure that, at any one time, it would be possible for each mortgage to be linked to one and only one FSA authorised firm (with mortgage permission) to have the ongoing regulatory responsibility towards consumers" (HM Treasury, Regulating Mortgages, February 2002, paragraph 47). In other words, it should be possible to arrange a *securitisation* transaction so that the *SPV* and other third parties do not carry on *regulated activities*, so long as an *authorised person* (with appropriate *permission*) is involved.

### Entering into a regulated mortgage contract

4.16.3G A *SPV* does not carry on the *regulated activity* of *entering into a regulated mortgage contract* (or *agreeing* to do so), merely by acquiring the legal or beneficial interest in the contract from the original lender, or by providing funding to the original lender. If the contract is subsequently varied, a *SPV* should take care to avoid the original contract being replaced with a new *regulated mortgage contract* (see *AUTH* App 4.4.4G and *AUTH* App 4.4.13G). The original lender is, or course, likely to require *authorisation*.

### Administering, arranging and advising on a regulated mortgage contract

4.16.4G If an *unauthorised SPV* arranges for an *authorised person* with *permission* to *administer a regulated mortgage contract* to administer its *regulated mortgage contracts*, it can avoid carrying on the *regulated activities* of:

- (1) *administering a regulated mortgage contract*, because of the exclusion in article 62 of the *Regulated Activities Order* (described in *AUTH* App 4.8.4G);
- (2) *arranging (bringing about)* or *making arrangements with a view to regulated mortgage contracts*, because any arrangements that may be made by the *authorised person* in administering the contract are excluded, for the *SPV*, by article 29A of the *Regulated Activities Order* (referred to at *AUTH* App 4.5.9G); in addition, making the original

*securitisation* arrangements is unlikely to be a *regulated activity*, as it is unlikely to “bring about” the entering into of the contract and the borrower is unlikely to participate in the arrangements;

- (3) *advising on regulated mortgage contracts*, because any advice given by the *authorised person* in administering the contract is excluded, for the *SPV*, by article 54A of the *Regulated Activities Order* (referred to at *AUTH App 4.6.28G*); and
- (4) *agreeing to carry on* any of the activities in (1) to (3) because agreeing to carry on an activity is only a *regulated activity* if the activity to be carried on would itself be a *regulated activity*.

## 4.17 Interaction with the Consumer Credit Act

### Entering into and administering a regulated mortgage contract

- 4.17.1G Article 90 of the *Regulated Activities Order* essentially carves out *regulated mortgage contracts* from regulation under the Consumer Credit Act 1974 (CCA). Many loans that fall within the *regulated mortgage contract* definition are already exempt from much of the detail required under the CCA.
- 4.17.2G Some loans that will fall within the *regulated mortgage contract* definition are also currently classified as regulated agreements under the CCA. In these cases, the impact of the carve-out in article 90 of the *Regulated Activities Order* is likely to be more significant. In particular, most of the CCA controls in respect of entering into, operation and termination of agreements will not apply. Article 90 also, however, provides that section 126 of the CCA (Enforcement of land mortgages) and other provisions relating to it, apply to agreements which would otherwise be regulated agreements. In the *FSA's* view, it follows that section 126 of the CCA and related provisions including sections 129, 130, 131, 135 and 136 (dealing amongst other things with extension of time and protection of property pending proceedings) will apply to these *regulated mortgage contracts*.
- 4.17.3G *Regulated mortgage contracts* in place at 31 October 2004 which are subject to the CCA will remain subject to that regime and will not be brought within the *FSA's* remit. But there may be instances where a variation of an existing contract amounts to entering into a new *regulated mortgage contract* (see *AUTH App 4.4.4G* and *AUTH App 4.4.13G*).
- 4.17.4G Unsecured loans, as well as loans secured on second charges on property, are not subject to the article 90 carve-out. Many of these loans are currently covered by the CCA and the position will not change.
- 4.17.5G In some cases, lenders may provide a flexible mortgage product comprising both a secured first charge loan and unsecured borrowing, for example credit card facilities. In this example, in addition to considering the need for *authorisation*, the lender will also require a CCA licence in respect of the unsecured lending, even where the product is sold under a single agreement.

## Advising on and arranging a regulated mortgage contract

- 4.17.6G The CCA also regulates *persons* who carry on certain types of ancillary credit business including “credit brokerage”, “debt-adjusting” and “debt-counselling”, as defined by section 145 of the CCA. One aspect of the CCA regime is that a licence is required for these activities. Article 20 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.1) Order 2003 adds new exceptions to section 145 of the CCA in relation to these activities.
- 4.17.7G Article 20(2) amends section 146 of the CCA (Exceptions from section 145) so that it is not “credit brokerage” for a person to introduce an individual seeking to obtain credit if the introduction is made (a) to an *authorised person* who has *permission* to enter as lender into “relevant agreements”; or (b) to a “qualifying broker”, with a view to that individual obtaining credit under a “relevant agreement”.
- 4.17.8G Amended section 146 of the CCA defines “relevant agreement” as meaning a consumer credit agreement secured by a land mortgage, where entering into that agreement as lender is a *regulated activity*. “Qualifying broker” is defined in the same section as meaning a *person* who may effect introductions of the kind mentioned in *AUTH* App 4.17.7G without contravening the *general prohibition* under section 19 of the *Act*. “Credit brokerage” itself includes introducing an individual seeking to obtain credit to finance the acquisition of a dwelling to be occupied by himself or his relatives, to any *person* carrying on a business in the course of which he provides credit secured on land (for full definition see section 145(2) of the CCA).
- 4.17.9G In addition to the provisions of the exception under amended section 146 of the CCA, introducers are referred to the *guidance* in *AUTH* App 4.5.10G dealing with the provisions relating to introducing in the *Regulated Activities Order*.
- 4.17.10G Article 20(2) amends section 146 of the CCA by providing that it is not “debt adjusting” to carry on an activity which would otherwise be “debt adjusting” under section 146(5) of the CCA if (a) the debt in question is due under a “relevant agreement”; and (b) that activity constitutes a *regulated activity*. “Debt adjusting” includes in relation to debts due under consumer credit agreements (a) negotiating with the creditor, on behalf of the debtor, terms for discharge of the debt, or (b) taking over, in return for payments by the debtor, his obligation to discharge a debt, or (c) any similar activity concerned with the liquidation of the debt (see full definition in section 145(5) of the CCA).
- 4.17.11G In addition to the provisions of the exception under amended section 146 of the CCA, debt adjusters and arrangers are referred to the *guidance* in *AUTH* App 4.5 dealing with the provisions relating to arranging and, in particular, *AUTH* App 4.5.1G(1)(b) dealing with varying a *regulated mortgage contract*.
- 4.17.12G Article 20(2) amends section 146 CCA by providing that it is not “debt-counselling” for a *person* to give advice to debtors if (a) the debt in question is due under a “relevant agreement”; and (b) giving that advice constitutes a *regulated activity*. “Debt-counselling” includes the giving of advice to debtors

about the liquidation of debts due under consumer credit agreements (see the full definition in section 145(6) of the CCA).

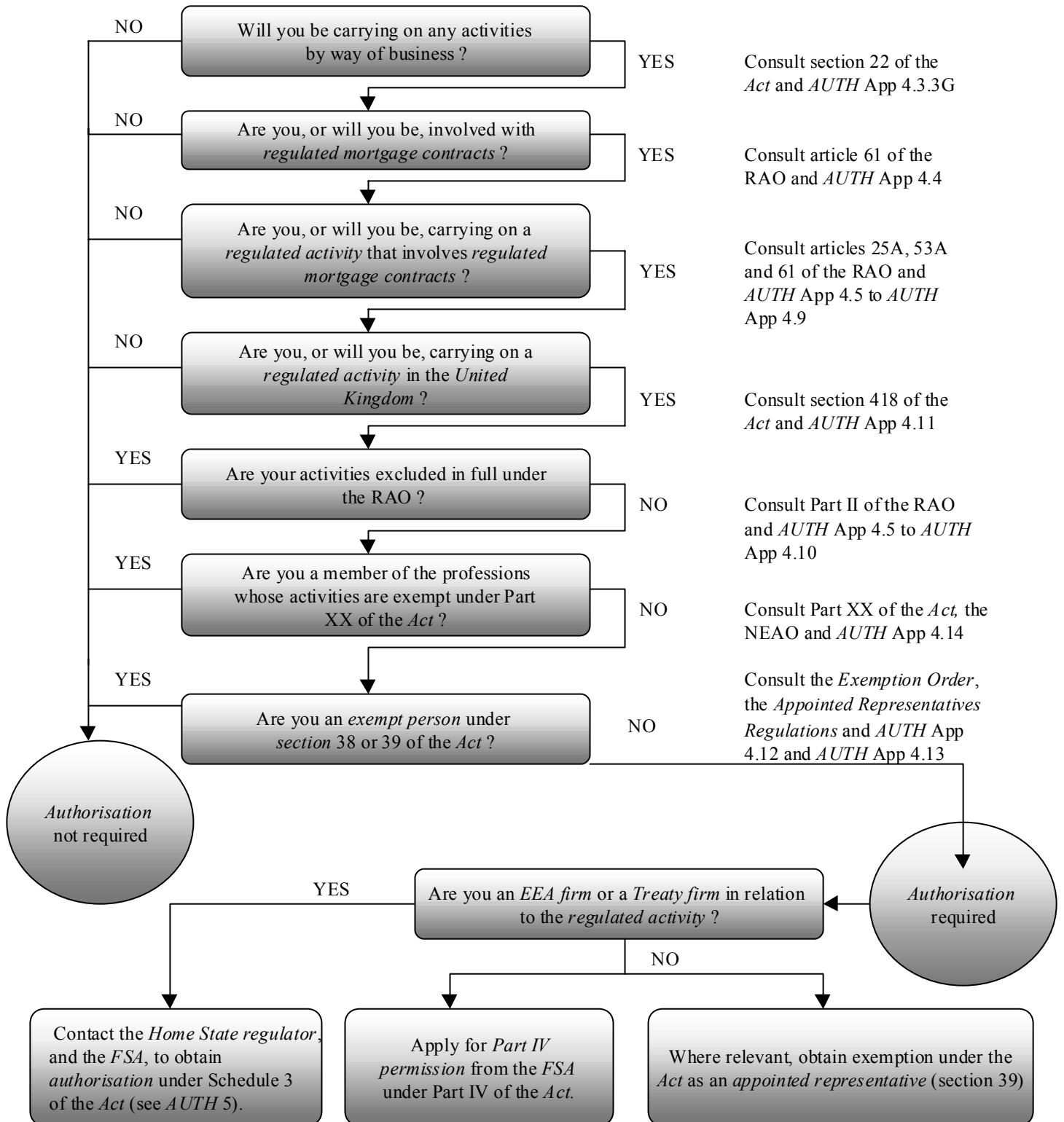
- 4.17.13G In addition to the provisions of the exception under amended section 146 of the CCA, debt counsellors and advisers are referred to the *guidance* in *AUTH* App 4.6 dealing with *advising on regulated mortgage contracts* and, in particular, *AUTH* App 4.6G (Definition of ‘advising on regulated mortgage contracts’) dealing with varying a *regulated mortgage contract*.
- 4.17.14G The CCA's licensing regime will still apply to credit brokers, debt adjusters and debt counsellors in respect of non-regulated mortgages and other loans, as well as to *authorised persons* or *appointed representatives* who carry on ancillary credit business in addition to *regulated activities*. Accordingly, *mortgage intermediaries* requiring *authorisation* may also need to retain their CCA licences.

### **Financial Promotion and advertisements**

- 4.17.15G Articles 90 and 91 of the *Regulated Activities Order* include provisions that have the effect of removing from CCA regulation *financial promotions* about *qualifying credit*. Such promotions will not therefore be subject to Part IV of the CCA, the Consumer Credit (Advertisements) Regulations 1989 and the Consumer Credit (Content of Quotations) and Consumer Credit (Advertisements) (Amendment) Regulations 1999.
- 4.17.16G For more detailed *guidance* concerning the interface between the *financial promotion* regime and the regulation of credit advertisements under the CCA, see *AUTH* App 1.17.17G.

## 4.18 Regulated activities related to mortgages: flowchart

### Do you need authorisation ?



#### Key to Abbreviations :

NEAO = The Financial Services and Markets Act 2001 (Professions) (Non Exempt Activities) Order 2001

RAO = The Financial Services and Markets Act 2001 (Regulated Activities) Order 2001.



## Annex G

### Amendments to SUP

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 8.2.7G Rules which can be waived (see *SUP* 8.2.6G)

Rules	Section of the Act or other provision under which rules are made	Chapters of the Handbook where such rules appear (Note 1)
...		
Financial promotion rules	Section 145	<i>COB 3, <u>MCOB 3</u>, PRIN and SYSC</i>

## Annex H

### Amendments to DISP

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 1.2.11G In order to comply with *DISP* 1.2.9R(1), a *firm* may include reference to its complaint handling procedures in contractual documentation, for example, (where the *firm* is subject to the requirements in *COB*) in a *terms of business letter, key features document or client agreement*, or (where the *firm* is subject to the requirements in *MCOB*) in an initial disclosure document or *offer document*.

## Annex I

### Amendments to COMP

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section is inserted, the place it goes is indicated and it is not underlined.

1.3.3G Table: Areas of particular interest to claimants (see *COMP* 1.3.3G). This table belongs to *COMP* 1.3.3G.

<b><i>Q1</i></b>	<b>What do I need to do in order to receive compensation?</b>	
<b><i>A1</i></b>	In order to receive compensation:	
	(1) you must be an <i>eligible claimant</i> ;	<i>COMP</i> 4.2-3
	(2) you must have a <i>protected claim</i> ;	<i>COMP</i> 5.2- <del>56</del>
	(3) you must be claiming against a <i>relevant person</i> ;	<i>COMP</i> 6.2.1R
	...	
<b><i>Q2</i></b>	<b>How much compensation will I be offered?</b>	
<b><u><i>A2</i></u></b>	This depends on whether your <i>protected claim</i> is:	
	(1) a <i>claim</i> for a <i>protected deposit</i> ; or	<i>COMP</i> 5.3
	(2) a <i>claim</i> under a <i>protected contract of insurance</i> ; or	<i>COMP</i> 5.4
	(3) a <i>claim</i> in connection with <i>protected investment business</i> ; <u>or</u>	<i>COMP</i> 5.5
	(4) a <i>claim</i> in connection with <u><i>protected mortgage business</i></u> .	<u><i>COMP</i> 5.6</u>
	Different limits apply to different types of <i>claim</i> .	<i>COMP</i> 10.2.3R
<b><i>Q3</i></b>	<b>How will the FSCS calculate the compensation that is offered to me?</b>	
<b><i>A3</i></b>	Again, this will depend on whether your <i>protected claim</i> is a:	

	(1) a <i>claim</i> for a <i>protected deposit</i> ; or	COMP 12.2.1R, 12.3.1R and 12.4.1R
	(2) a <i>claim</i> under a <i>protected contract of insurance</i> ; or	COMP 12.2.1R, 12.3.2-4R and 12.4.9R – 12.5.2R
	(3) a <i>claim</i> in connection with <i>protected investment business</i> ; <u>or</u>	COMP 12.2.1R, 12.3.5-6R and 12.4.2-8R
	(4) <u>a <i>claim</i> in connection with <i>protected mortgage business</i>.</u>	<u>COMP 12.4.17-19R</u>
	...	

...

#### 4.3.7 G **Protected investment business and protected mortgage business**

There are no exceptions to COMP 4.2.2R for *claims* made in connection with *protected investment business* or *protected mortgage business*.

...

5.2.1R A *protected claim* is:

- (1) a *claim* for a *protected deposit* (see COMP 5.3); or
- (2) a *claim* under a *protected contract of insurance* (see COMP 5.4); or
- (3) a *claim* in connection with *protected investment business* (see COMP 5.5); or
- (4) a *claim* in connection with *protected mortgage business* (see COMP 5.6).

After COMP 5.5, insert the following new section:

#### **5.6 Protected mortgage business**

5.6.1R *Protected mortgage business* is:

- (1) *advising on regulated mortgage contracts*; or
- (2) *arranging (bringing about) regulated mortgage contracts*; or
- (3) *making arrangements with a view to regulated mortgage contracts*; or
- (4) *agreeing to carry on a regulated activity in (1) to (3)*; or

- (5) the activities of a *mortgage lender* which would be *arranging* but for article 28A of the *Regulated Activities Order* (Arranging contracts to which the arranger is a party);

provided that the condition in *COMP 5.6.2R* is satisfied.

5.6.2R *COMP 5.6.1R* applies only if the *protected mortgage business* was carried on by a *relevant person*:

- (1) with a *customer* who was resident in the *United Kingdom*; or
- (2) from an establishment maintained by the *relevant person* (or its *appointed representative*) in the *United Kingdom* with a *customer* who was resident elsewhere in the *EEA*;

at the time the *protected mortgage business* was carried on.

...

6.3.4R For claims arising in connection with *protected investment business* or *protected mortgage business*, the *FSCS* has the additional power to determine that a *relevant person* is *in default* if it is satisfied that a *protected claim* exists, and:

...

8.2.4R For claims made in connection with *protected investment business* or *protected mortgage business*, the *FSCS* may disregard a defence of limitation where the *FSCS* considers that it would be reasonable to do so.

9.2.2R The *FSCS* may postpone paying compensation if:

- (1) ...
- (2) in the case of a *claim* relating to *protected investment business* which is not an *ICD claim* or a *claim relating to protected mortgage business*, the *FSCS* considers that the claimant should first exhaust his rights against the *relevant person* or any third party, or make and pursue an application for compensation to any other *person*; or

....

Add to the table at 10.2.3R:

Type of claim	Level of cover	Maximum payment
<u><i>protected mortgage business</i></u>	<u>100% x first £30,000</u>	<u>£48,000</u>
	<u>90% x next £20,000</u>	

After *COMP* 12.3.6R, insert the following new section:

**Protected mortgage business**

12.3.7R For a *claim* made in connection with *protected mortgage business*, the *FSCS* must determine a specific date as the *quantification date*, and this date may be either on, before or after the date of determination of default.

After *COMP* 12.4.16R, insert the following new section:

**Protected mortgage business**

12.4.17R The *FSCS* may pay compensation for any *claim* made in connection with any *protected mortgage business* only to the extent that the *FSCS* considers that the payment of compensation is essential in order to provide the claimant with fair compensation.

12.4.18R The *FSCS* must not pay compensation for any *claim* in connection with *protected mortgage business* to the extent that it relates to or depends on:

- (1) a failure of investment performance to match a guarantee given or representation made; or
- (2) the mere fluctuation in the value of property.

12.4.19R The *FSCS* may decide to reduce the compensation that would otherwise be payable for a *claim* made in connection with *protected mortgage business* if it is satisfied that there is evidence of contributory negligence by the claimant and it would be inequitable for *FSCS* not to take account of that fact.

## Annex J

### Amendments to ECO

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 2.1.2G (3) *ECO 2.2* also extends the territorial scope of *COB 3* (Financial promotion) and *MCOB 3* (Financial promotion) in relation to a *financial promotion* which is an *outgoing electronic commerce communication*, whether or not the recipient is a *consumer*.

#### Financial promotion

- 2.2.3R (1) In relation to a *financial promotion* which is an *outgoing electronic commerce communication*, a *firm* must comply with *COB 3* (Financial promotion) and *MCOB 3* (Financial promotion) as if the *person* to whom the communication is made or directed was in the *United Kingdom*.
- (2) Accordingly, (1) overrides *COB 3.3* (Application: where?) and *MCOB 3.3* (Application: where?).
- (3) But (1) is subject to *ECO 2.2.1R*, which disapplies certain *rules* applicable to *incoming ECA providers* when dealing with *consumers*.

- 2.2.4G The effect of *ECO 2.2.3R* is to apply the whole of *COB 3* and *MCOB 3*, where relevant, to *outgoing electronic commerce communications*, except those provisions of *COB 3* identified in *ECO 2.2.1R*. (See *ECO 2.2.2G* for an explanation of this approach.)

## Annex K

### Amendments to ELM

In this Annex, underlining indicates new text

1.5.2G Table Application of other parts of the Handbook to ELMIs

Block	Module	Application
...		
Block 2 (Business standards)	...	
	Conduct of Business sourcebook ( <i>COB</i> )	...
	...	
	<u>Mortgages: Conduct of Business sourcebook</u> <u>(<i>MCOB</i>)</u>	Does not apply to an <i>ELMI</i> when <i>issuing e-money</i> .



## Annex L

### Amendments to PROF

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 5.3.1G The parts of the *Handbook* in which provisions are disapplied or modified in relation to *authorised professional firms* when carrying on *non-mainstream regulated activities* include those described in *PROF 5.3.1AG* to *PROF 5.3.~~78G~~*.

#### Mortgages: Conduct of business sourcebook

- 5.3.8G *MCOB 1.2.4 R* provides that *MCOB* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* except for *MCOB 2.2 (Clear, fair and not misleading communication)*, *MCOB 3 (Financial promotion)* and to a limited extent *MCOB 4.4 (Initial disclosure requirements)*.

## Annex M

### Amendments to the Special guide for energy market participants (EMPS)

In this Annex, underlining indicates new text.

1.2.3G Table: Applicability of parts of Handbook to energy market participants  
This table belongs to *EMPS* 1.2.3G

	Parts of Handbook	Applicability to energy market participants
...		
<b>Business Standards</b>	...	
	Conduct of Business sourcebook ( <i>COB</i> )	...
	<u>Mortgages: Conduct of Business sourcebook (<i>MCOB</i>)</u>	
	Market Conduct sourcebook ( <i>MAR</i> )	...
	...	
<b>Regulatory processes</b>	...	

## Annex N

### Amendments to the Special guide for small Friendly societies (FREN)

In this Annex, underlining indicates new text.

1.2.2G Table: Applicability of parts of Handbook to small Friendly societies  
This table belongs to *FREN* 1.2.2G

	Parts of Handbook	Applicability to small friendly societies
...		
<b>Business Standards</b>	...	
	Conduct of Business sourcebook ( <i>COB</i> )	...
	<u>Mortgages: Conduct of Business sourcebook (<i>MCOB</i>)</u>	
	Market conduct sourcebook ( <i>MAR</i> )	...
	...	
<b>Regulatory Processes</b>	...	

## Annex O

### Amendments to the Special guide for oil market participants (OMPS)

In this Annex, underlining indicates new text.

1.2.3G Table: Applicability of parts of Handbook to oil market participants  
This table belongs to *OMPS* 1.2.2G

	Parts of Handbook	Applicability to oil market participants
...		
<b>Business Standards</b>	...	
	Conduct of Business sourcebook ( <i>COB</i> )	...
	<u>Mortgages: Conduct of Business sourcebook (<i>MCOB</i>)</u>	
	Market Conduct sourcebook ( <i>MAR</i> )	...
	...	
<b>Regulatory processes</b>	...	

## Annex P

### Amendments to the Special guide for service companies (SERV)

In this Annex, underlining indicates new text.

1.2.3G Table: Applicability of parts of Handbook to service companies  
This table belongs to *SERV* 1.2.2G

	Parts of Handbook	Applicability to service companies
...		
<b>Business Standards</b>	...	
	Conduct of Business sourcebook ( <i>COB</i> )	...
	<u>Mortgages: Conduct of Business sourcebook (<i>MCOB</i>)</u>	
	Market Conduct sourcebook ( <i>MAR</i> )	...
	...	
<b>Regulatory processes</b>	...	

## Annex Q

### Amendment to the Glossary

Insert the following new definitions in the appropriate alphabetical position:

<i>administering a regulated lifetime mortgage contract</i>	the <i>regulated activity</i> , specified in article 61(2) of the <i>Regulated Activities Order</i> , which is in summary: administering a <i>regulated mortgage contract</i> (which is a <i>lifetime mortgage</i> ) where the contract was entered into after 31 October 2004.
<i>administering a regulated mortgage contract</i>	the <i>regulated activity</i> , specified in article 61(2) of the <i>Regulated Activities Order</i> , which is in summary: administering a <i>regulated mortgage contract</i> where the contract was entered into after 31 October 2004.
<i>advising on regulated mortgage contracts</i>	the <i>regulated activity</i> , specified in article 53A of the <i>Regulated Activities Order</i> , which is in summary: advising a <i>person</i> if the advice: <ul style="list-style-type: none"><li>(a) is given to the <i>person</i> in his capacity as a borrower or potential borrower; and</li><li>(b) is advice on the merits of his:<ul style="list-style-type: none"><li>(i) entering into a particular <i>regulated mortgage contract</i>; or</li><li>(ii) varying the terms of a <i>regulated mortgage contract</i> entered into by him after 31 October 2004 in such a way as to vary his obligations under that contract.</li></ul></li></ul>
<i>annual percentage rate</i>	the annual percentage rate of charge for a contract as calculated in accordance with <i>MCOB 10</i> (Annual percentage rate).
<i>APR</i>	<i>annual percentage rate</i> .
<i>arranging qualifying credit</i>	the <i>controlled activity</i> , specified in paragraph 10A of Schedule 1 to the <i>Financial Promotion Order</i> , of making arrangements: <ul style="list-style-type: none"><li>(a) for another <i>person</i> to enter as borrower into an agreement for the provision of <i>qualifying credit</i>, or</li><li>(b) for a borrower under a <i>regulated mortgage contract</i>, entered into after 31 October 2004, to vary the terms of that contract.</li></ul>
<i>arranging (bringing about)</i>	the <i>regulated activity</i> , specified in article 25A(1) of the

<i>regulated mortgage contracts</i>	<p><i>Regulated Activities Order</i>, which is in summary: making arrangements for another <i>person</i> to:</p> <ul style="list-style-type: none"> <li>(a) enter into a <i>regulated mortgage contract</i> as borrower; or</li> <li>(b) vary the terms of a <i>regulated mortgage contract</i> entered into by him as borrower after 31 October 2004.</li> </ul> <p>(see also <i>arranging</i> (in relation to <i>regulated mortgage contracts</i>) and <i>making arrangements with a view to regulated mortgage contracts</i>.)</p>
<i>arrears</i>	<p>(in relation to a <i>regulated mortgage contract</i>) either:</p> <ul style="list-style-type: none"> <li>(a) <b>a shortfall (equivalent to two or more regular payments) in the accumulated total payments actually made by the <i>customer</i> measured against the accumulated total amount of payments due to be received from the <i>customer</i>; or</b></li> <li>(b) remaining in breach, for more than one month, of an agreed borrowing limit or of an obligation to repay where the loan does not have a regular repayment plan.</li> </ul>
<i>borrow back</i>	a feature of a <i>regulated mortgage contract</i> under which the <i>customer</i> has the ability to re-borrow monies paid by him.
<i>business illustration</i>	an <i>illustration</i> for a <i>regulated mortgage contract</i> that is for a business purpose.
<i>business offer document</i>	an <i>offer document</i> for a <i>regulated mortgage contract</i> that is for a business purpose.
<i>cashback</i>	(in <i>MCOB</i> ) a cash amount paid by a <i>mortgage lender</i> to a <i>customer</i> (typically at the beginning of a contract) as an inducement to enter into a <i>regulated mortgage contract</i> with the <i>mortgage lender</i> .
<i>distance contract</i>	any contract concerning financial services, the making or performance of which constitutes or is part of a <i>regulated activity</i> , concluded under an organised distance sales or service provision scheme run by the contractual provider of the service who, for the purpose of that contract, makes exclusive use (directly or through an intermediary) of one or more <i>means of distance communication</i> up to and including the time at which the contract is concluded.

*Distance Marketing Directive* the Directive of the Council and Parliament of 23 September 2002 on distance marketing of consumer financial services (No 2002/65/EC).

*Distance Marketing Regulations* the Financial Services (Distance Marketing) Regulations 2004 (SI 2004/[])

*distance mortgage mediation contract* a *distance contract*, the making or performance of which constitutes, or is part of:

- (a) *advising on regulated mortgage contracts*; or
- (b) *arranging (bringing about) regulated mortgage contracts*; or
- (c) *making arrangements with a view to regulated mortgage contracts*; or
- (d) *agreeing to carry on a regulated mortgage activity* in (a) to (c).

*DMD* *Distance Marketing Directive*.

*drawdown mortgage* a *lifetime mortgage* contract where:

- (a) the amount borrowed is paid by the *mortgage lender* to the *customer* in instalments during the life of the mortgage; and
- (b) the size and frequency of the instalments are:
  - (1) agreed between the *mortgage lender* and the *customer*; or
  - (2) set by reference to an index or interest rate (such as the Bank of England repo rate).

*durable medium* (in accordance with article 2(f) of the *Distance Marketing Directive* and article 2(12) of the *Insurance Mediation Directive*) (in relation to information addressed personally to a recipient) in a form which:

- (a) is capable of being used by the recipient;
- (b) enables the recipient to store the information in a way accessible for future reference for a period of time adequate for the purposes of the information; and
- (c) allows the unchanged reproduction of the information;

and includes paper, floppy disks, CD-ROMs, DVDs and the hard drive of the recipient's computer on which electronic mail is stored, but not Internet websites unless they fulfil the criteria



in (a),(b) and (c).

<i>early repayment charge</i>	(in <i>MCOB</i> ) a charge levied by the <i>mortgage lender</i> on the <i>customer</i> in the event that the amount of the loan is repaid in full or in part before a date specified in the contract.
<i>entering into a regulated mortgage contract</i>	the <i>regulated activity</i> , specified in article 62(1) of the <i>Regulated Activities Order</i> , which is in summary: entering into a <i>regulated mortgage contract</i> as lender.
<i>fixed-sum credit</i>	(in accordance with section 10(1)(b) of the Consumer Credit Act 1974) any facility under a contract, other than <i>running-account credit</i> , by which the <i>customer</i> is enabled to receive credit (whether in one amount or by instalments).
<i>higher lending charge</i>	a fee charged by a <i>mortgage lender</i> (under a <i>regulated mortgage contract</i> ) where the amount borrowed exceeds a given percentage of the value of the property.
<i>illustration</i>	(in <i>MCOB</i> ) the illustration of the costs and features of a <i>regulated mortgage contract</i> which is required to be provided by <i>MCOB 5</i> (Pre-application disclosure), <i>MCOB 6</i> (Disclosure at the offer stage), <i>MCOB 7</i> (Disclosure at start of contract and after sale) and <i>MCOB 9</i> (Lifetime mortgages: product disclosure).
<i>interest-only mortgage</i>	a <i>regulated mortgage contract</i> other than a <i>repayment mortgage</i> .
<i>large business customer</i>	(in relation to a <i>regulated mortgage contract</i> or <i>qualifying credit</i> , and in relation to an activity to be carried on by a <i>firm</i> ) a <i>client</i> , if the credit is for the purposes of a business which has a group annual turnover of £1 million or more.
<i>lifetime mortgage</i>	a <i>regulated mortgage contract</i> under which:  (a) entry into the mortgage is restricted to older <i>customers</i> above a specified age;  and  (b) the <i>mortgage lender</i> may or may not specify a mortgage term, but will not seek full repayment of the loan (including interest, if any, outstanding) until the occurrence of one or more of the following:

- (i) the death of the *customer*; or
- (ii) the *customer* leaves the mortgaged land to live elsewhere and has no reasonable prospect of returning (for example by moving into residential care); or
- (iii) the *customer* acquires another dwelling for use as his main residence; or
- (iv) the *customer* sells the mortgaged land; or
- (v) the *mortgage lender* exercises its legal right to take possession of the mortgaged land under the terms of the contract.

and

- (c) while the *customer* continues to occupy the mortgaged land as his main residence:
  - (i) no instalment repayments of the capital and no payment of interest on the capital (other than interest charged when all or part of the capital is repaid voluntarily by the *customer*), are due or capable of becoming due; or
  - (ii) although interest payments may become due, no full or partial repayment of the capital is due or capable of becoming due; or**
  - (iii) although interest payments and partial repayment of the capital may become due, no full repayment of the capital is due or capable of becoming due.**

*limit of indemnity*

(in PRU 9.1(Professional indemnity insurance requirements for insurance and mortgage mediation activity and mortgage lending and administering)) the sum available to indemnify a *firm* in respect of each claim made under its *professional indemnity insurance*.

*linked borrowing*

additional credit facilities (which may be secured, unsecured, or both) that are integral to a *regulated mortgage contract* but which may be the subject of a separate contract.

*linked deposits*

additional facilities (which may be a current account, a savings account, or both) that are linked to a *regulated mortgage contract* but which may be the subject of a separate contract.

*making arrangements with a view to regulated*

the *regulated activity*, specified in article 25A(2) of the *Regulated Activities Order*, which is in summary: making

<i>mortgage contracts</i>	arrangements with a view to a <i>person</i> who participates in the arrangements entering into a <i>regulated mortgage contract</i> as borrower.  (see also <i>arranging</i> (in relation to <i>regulated mortgage contracts</i> ) and <i>arranging (bringing about) regulated mortgage contracts.</i> )
<i>MCOB</i>	the Mortgages: Conduct of Business sourcebook.
<i>means of distance communication</i>	(in accordance with article 2(e) of the <i>Distance Marketing Directive</i> ) any means used for the distance marketing of a service between parties which does not involve the simultaneous physical presence of those parties.
<i>mortgage administrator</i>	a <i>firm</i> with <i>permission</i> (or which ought to have <i>permission</i> ) for <i>administering a regulated mortgage contract</i> .
<i>mortgage adviser</i>	a <i>firm</i> with <i>permission</i> (or which ought to have <i>permission</i> ) for <i>advising on regulated mortgage contracts</i> .
<i>mortgage arranger</i>	a <i>firm</i> with <i>permission</i> (or which ought to have <i>permission</i> ) for <i>arranging</i> (see also <i>arranging (bringing about) regulated mortgage contracts</i> and <i>making arrangements with a view to regulated mortgage contracts</i> ).
<i>mortgage credit card</i>	a <i>plastic card</i> which is a credit card issued under a <i>regulated mortgage contract</i> and not regulated by the Consumer Credit Act 1974.
<i>mortgage intermediary</i>	a <i>firm</i> with <i>permission</i> (or which ought to have <i>permission</i> ) to carry on <i>mortgage mediation activity</i> .
<i>mortgage lender</i>	a <i>firm</i> with <i>permission</i> (or which ought to have <i>permission</i> ) for <i>entering into a regulated mortgage contract</i> .
<i>mortgage mediation activity</i>	any of the following <i>regulated activities</i> : <ul style="list-style-type: none"> <li>(a) <i>arranging (bringing about) regulated mortgage contracts</i> (article 25A(1));</li> <li>(b) <i>making arrangements with a view to regulated mortgage contracts</i> (article 25A(2));</li> <li>(c) <i>advising on regulated mortgage contracts</i> (article 53A);</li> </ul>

- (d) *agreeing to carry on a regulated activity* in (a) to (c) (article 64).

<i>mortgage shortfall debt</i>	the outstanding debt, under a <i>regulated mortgage contract</i> , following the sale of the mortgaged property.
<i>non-real time qualifying credit promotion</i>	(in accordance with article 7(2) of the <i>Financial Promotion Order</i> ) (as more fully described in <i>MCOB 3.5.5R</i> ("Real time" and "non-real time" qualifying credit promotions)) a <i>qualifying credit promotion</i> that is not a <i>real time qualifying credit promotion</i> .
<i>normally resident</i>	(in <i>MCOB</i> ) normally resident; for the purposes of this definition: <ul style="list-style-type: none"><li>(a) an individual (whether or not acting as trustee) is to be treated as normally resident in the country which he indicates is his country of residence, unless the <i>firm</i> has reason to doubt this; and</li><li>(b) a <i>body corporate</i> acting as trustee is to be treated as resident in the country in which its registered office (or, if it has no registered office, its head office) is located.</li></ul>
<i>offer document</i>	(in <i>MCOB</i> ) a document in which the <i>mortgage lender</i> offers to enter into a <i>regulated mortgage contract</i> with a <i>customer</i> .
<i>payment holiday</i>	a feature of a <i>regulated mortgage contract</i> under which the <i>mortgage lender</i> permits the <i>customer</i> to make no payments for a specified period without being in <i>arrears</i> .
<i>price information</i>	(in <i>MCOB</i> ) information, in a <i>qualifying credit promotion</i> , that relates to: <ul style="list-style-type: none"><li>(a) any rate of charge; or</li><li>(b) the presence or absence of any payments, fees or charges (other than the fees for <i>advising on</i> or <i>arranging</i> a <i>regulated mortgage contract</i> as required by <i>MCOB 3.6.27R</i> ); or</li><li>(c) the amount, frequency or number of any payments, repayments, fees or charges; or</li><li>(c) any monetary amounts.</li></ul>
<i>procurator fee</i>	the total amount paid by a <i>mortgage lender</i> to a <i>mortgage intermediary</i> , whether directly or indirectly, in connection with

providing applications from *customers* to enter into *regulated mortgage contracts* with that *mortgage lender*.

*protected mortgage business*

activities in relation to *regulated mortgage contracts* which are covered by the *compensation scheme*, as defined in *COMP 5.6.1R*.

*providing qualifying credit*

the *controlled activity*, specified in paragraph 10 of Schedule 1 to the *Financial Promotion Order*, of providing *qualifying credit*.

*qualifying credit*

(as defined in Schedule 1 paragraph 10 (Providing qualifying credit) of the *Financial Promotion Order*) credit (including a cash loan and any other form of financial accommodation) provided in accordance with an agreement under which:

- (a) **the lender is a person who enters into or administers regulated mortgage contracts; and**
- (b) the obligation of the borrower to repay is secured (in whole or in part) on land.

*qualifying credit promotion*

an invitation or inducement that relates to *qualifying credit*; that is, an invitation or inducement to:

- (a) enter or offer to enter into an agreement the making or performance of which by either party constitutes the *controlled activity* in:
  - (i) paragraph 10 (Providing qualifying credit); or
  - (ii) paragraph 10A (Arranging qualifying credit etc.); or
  - (iii) paragraph 10B (Advising on qualifying credit etc.);of schedule 1 to the *Financial Promotion Order*; or
- (b) exercise any rights conferred by an agreement for *qualifying credit* to acquire, dispose of, underwrite or convert rights under an agreement for *qualifying credit*.

*qualifying credit promotion rules*

the *rules* in *MCOB 3* (Financial promotion).

*real time qualifying credit promotion*

(in accordance with article 7(1) of the *Financial Promotion Order*) (as more fully described in *MCOB 3.5.5R* ('Real time' and 'non-real time' qualifying credit promotions)) a *qualifying credit promotion* made in the course of a personal visit, telephone conversation or other interactive dialogue.

*regulated lifetime mortgage contract* a regulated mortgage contract which is a lifetime mortgage.

*regulated mortgage activity* any of the following activities specified in Part II of the *Regulated Activities Order* (Specified Activities):

- (a) *arranging (bringing about) regulated mortgage contracts* (article 25A(1));
- (b) *making arrangements with a view to regulated mortgage contracts* (article 25A(2));
- (c) *advising on regulated mortgage contracts* (article 53A);
- (d) *entering into a regulated mortgage contract* (article 61(1));
- (e) *administering a regulated mortgage contract* (article 61(2));
- (f) *agreeing to carry on a regulated activity in (a) to (e)* (article 64).

*regulated mortgage contract*

- (a) (in relation to a contract) (in accordance with article 61(3) of the *Regulated Activities Order*) a contract which, at the time it is entered into, meets the following conditions:
  - (i) a lender provides credit to an individual or to trustees (the ‘borrower’); and
  - (ii) the obligation of the borrower to repay is secured by a first legal mortgage on land (other than timeshare accommodation) in the *United Kingdom*, at least 40% of which is used, or is intended to be used, as or in connection with a dwelling by the borrower or (in the case of credit provided to trustees) by an individual who is a beneficiary of the trust, or by a person who is in relation to the borrower or (in the case of credit provided to trustees) a beneficiary of the trust:
    - (A) that person’s spouse; or
    - (B) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or
    - (C) that person’s parent, brother, sister, child, grandparent or grandchild.
- (b) (in relation to a *specified investment*) the *investment*,

specified in article 88 of the *Regulated Activities Order*, which is rights under a *regulated mortgage contract* within (a).

<i>relevant date</i>	(in <i>MCOB</i> 10 (Annual percentage rate)): <ul style="list-style-type: none"><li>(a) (where a date is specified in or determinable under an agreement at the date of its making as the date on which the debtor is entitled to require provision of anything which is the subject of the agreement) the earliest such date;</li><li>(b) (in any other case) the date of making the agreement.</li></ul>
<i>repayment mortgage</i>	<i>a regulated mortgage contract</i> under which the <i>customer</i> is obliged to make payments of interest and capital which are designed to repay the mortgage over the stated term.
<i>repayment vehicle</i>	the means by which the <i>customer</i> will repay the capital due under the <i>regulated mortgage contract</i> , where all or part of that contract is an <i>interest-only</i> mortgage.
<i>repossess</i>	(in <i>MCOB</i> ) take possession of the mortgaged property.
<i>restricted-use credit agreement</i>	(in accordance with section 11 of the Consumer Credit Act 1974) an agreement: <ul style="list-style-type: none"><li>(a) to finance a transaction between the <i>customer</i> and the <i>firm</i>, whether forming part of that agreement or not;</li><li>(b) to finance a transaction between the <i>customer</i> and a person (the ‘supplier’) other than the <i>firm</i>;</li><li>(c) to refinance any existing indebtedness of the <i>customer’s</i>, whether to the <i>firm</i> or another <i>person</i>.</li></ul>
<i>retail customer</i>	(in accordance with the meaning of ‘consumer’ in article 2(d) of the <i>Distance Marketing Directive</i> ) an individual who is acting for purposes which are outside his trade, business or profession.
<i>roll-up of interest mortgage</i>	<i>a regulated mortgage contract</i> where no payment of interest on the amount borrowed (other than interest charged when all or part of the amount borrowed is repaid voluntarily by the <i>customer</i> ), is due or capable of becoming due while the <i>customer</i> continues to occupy the mortgaged property as his main residence and fulfil his obligations under the <i>regulated mortgage contract</i> .

<i>running-account credit</i>	(in accordance with section 10(1)(a) of the Consumer Credit Act 1974) a facility under a contract by which the <i>customer</i> is enabled to receive from time to time (whether in his own person, or by another person) from the <i>firm</i> or a third party cash, goods and services (or any of them) to an amount or value such that, taking into account payments made by or to the credit of the <i>customer</i> , the credit limit (if any) is not at any time exceeded.
<i>secured lending</i>	lending where the <i>mortgage lender</i> takes security on land for the loan provided to the <i>customer</i> .
<i>securitisation</i>	a process by which assets are sold to a bankruptcy-remote <i>special purpose vehicle</i> in return for immediate cash payment and that vehicle raises the immediate cash payment through the issue of debt securities in the form of tradable notes or commercial paper.
<i>shared appreciation mortgage</i>	a <i>regulated mortgage contract</i> , a condition of which is that the <i>mortgage lender</i> will receive a share in any increase in value in the mortgaged property when the <i>customer</i> either sells the property or terminates the contract including a contract where, if there is a reduction in value, the <i>customer</i> is required to pay the <i>mortgage lender</i> all or part of the shortfall.
<i>solicited real time qualifying credit promotion</i>	(in accordance with article 8 of the <i>Financial Promotion Order</i> ) (as more fully described in MCOB 3.7.1R (Meaning of ‘solicited’ and ‘unsolicited ‘real time qualifying credit promotion’)) a <i>real time qualifying credit promotion</i> which is solicited.
<i>tariff of charges</i>	a list of all the charges (including amounts) that are payable on a <i>regulated mortgage contract</i> , including the reason for, and amount of, each charge.
<i>tied product</i>	a product, other than <i>linked borrowing</i> or a <i>linked deposit</i> , that a <i>customer</i> is obliged to purchase through a <i>mortgage lender</i> as a condition of taking out a <i>regulated mortgage contract</i> with that <i>mortgage lender</i> .
<i>total amount payable</i>	the <i>total charge for credit</i> plus the total amount of credit advanced.
<i>total charge for credit</i>	the total of the charges (determined as at the date of making the contract) specified in MCOB 10.4.2R as applying in relation to



the *secured lending* but excluding the charges specified in *MCOB 10.4.4R*.

*unsecured lending* lending where the *mortgage lender* does not take a mortgage or other form of security in respect of the credit provided to the *customer*.

*unsolicited real time qualifying credit promotion* (in accordance with article 8 of the *Financial Promotion Order*) (as more fully described in *MCOB 3.7.1R* (Meaning of ‘solicited’ and ‘unsolicited ‘real time qualifying credit promotion’)) a *real time qualifying credit promotion* which is not a *solicited real time qualifying credit promotion*.

Amend the following definitions as shown (underlining indicates new text, striking through indicates deleted text):

*arranging* (a) (except in relation to a *regulated mortgage contract*) *arranging (bringing about) deals in investments, making arrangements with a view to transactions in investments or agreeing to carry on ~~any~~ either of those regulated activities.*

(b) (in relation to a *regulated mortgage contract*) *arranging (bringing about) regulated mortgage contracts, making arrangements with a view to regulated mortgage contracts or agreeing to carry on either of those regulated activities;*

*client* (1) (except in *ML*; ~~and in~~ *PROF*; in relation to a *regulated mortgage contract*) any person with or for whom a *firm* conducts or intends to conduct *designated investment business* or any other *regulated activity*; and:

...

(4) (in relation to a *regulated mortgage contract*, except in *ML* and *PROF*) the individual or trustee who is the borrower or potential borrower under that contract.

*customer* (1) (except in *COB 3* and *MCOB 3*) a *client* who is not a *market counterparty*.

(2) (in *COB 3* and *MCOB 3*) a *person* in (1) or a *person* who would be such a *person* if he were a *client*.

*overseas person*

(in accordance with article 3(1) of the *Regulated Activities Order* (Interpretation)) a person who:

- (a) carries on any of the following *regulated activities*:
- (i) *dealing in investments as principal*;
  - (ii) *dealing in investments as agent*;
  - (iii) *arranging (bringing about) deals in investments*;
  - (iv) *arranging (bringing about) regulated mortgage contracts*;
  - (v) *making arrangements with a view to regulated mortgage contracts*;
  - (~~vi~~) *making arrangements with a view to transactions in investments*;
  - (~~vii~~) *managing investments*;
  - (~~viii~~) *safe custody and administering investments*;
  - (~~ix~~) *sending dematerialised instructions*;
  - (~~x~~) *causing dematerialised instructions to be sent*;
  - (~~xi~~) *establishing, operating or winding up a collective investment scheme*;
  - (~~xii~~) *acting as trustee of an authorised unit trust scheme*;
  - (~~xiii~~) *acting as the depositary or sole director of an open-ended investment company*;
  - (~~xiv~~) *establishing, operating or winding up a stakeholder pension scheme*;
  - (~~xv~~) *advising on investments*;
  - (~~xvi~~) *advising on regulated mortgage contracts*;
  - (~~xvii~~) *entering into a regulated mortgage contract*;
  - (~~xviii~~) *administering a regulated mortgage contract*;
  - (~~ixiv~~) *agreeing to carry on those regulated activities, disregarding the exclusion in article 72 of the Regulated Activities Order (Overseas persons);*  
but
- (b) does not carry on any such activity, or offer to do so, from a permanent place of business maintained by him in the *United Kingdom*.

*regulated activity*

(in accordance with section 22 of the *Act* (The classes of activity and categories of investment)) any of the following activities specified in Part II of the *Regulated Activities Order* (Specified Activities):

- (a) *accepting deposits* (article 5);

- (b) *effecting contracts of insurance* (article 10(1));
- (c) *carrying out contracts of insurance* (article 10(2));
- (d) *dealing in investments as principal* (article 14);
- (e) *dealing in investments as agent* (article 21);
- (f) *arranging (bringing about) deals in investments* (article 25(1));
- (g) *making arrangements with a view to transactions in investments* (article 25(2));
- (ga) *arranging (bringing about) regulated mortgage contracts* (article 25A(1));
- (gb) *making arrangements with a view to regulated mortgage contracts* (article 25A(2));
- (h) *managing investments* (article 37);
- (i) *safeguarding and administering investments* (article 40); (for the purposes of the *permission* regime, this is sub-divided into:
  - (i) *safeguarding and administration of assets (without arranging)*;
  - (ii) *arranging safeguarding and administration of assets*);
- (j) *sending dematerialised instructions* (article 45(1));
- (k) *causing dematerialised instructions to be sent* (article 45(2));
- (l) *establishing, operating or winding up a collective investment scheme* (article 51(1)(a)); (for the purposes of the *permission* regime, this is sub-divided into:
  - (i) *establishing, operating or winding up a regulated collective investment scheme*;
  - (ii) *establishing, operating or winding up an unregulated collective investment scheme*);
- (m) *acting as trustee of an authorised unit trust scheme* (article 51(1)(b));
- (n) *acting as the depository or sole director of an open-ended investment company* (article 51(1)(c));
- (o) *establishing, operating or winding up a stakeholder pension scheme* (article 52);
- (p) *advising on investments* (article 53); (for the purposes of the *permission* regime, this is sub-divided into:
  - (i) *advising on investments (except pension transfers and pension opt-outs)*;

- (ii) *advising on pension transfers and pension opt-outs*);
  - (pa) *advising on regulated mortgage contracts (article 53A)*;
  - (q) *advising on syndicate participation at Lloyd's (article 56)*;
  - (r) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's (article 53)*;
  - (s) *arranging deals in contracts of insurance written at Lloyd's (article 58)*;
  - (sa) *entering into a regulated mortgage contract (article 61(1))*;
  - (sb) *administering a regulated mortgage contract (article 61(2))*;
  - (t) *agreeing to carry on a regulated activity (article 64)*;
- which is carried on by way of business and relating to a *specified investment* or, in the case of (l), (m), (n) and (o), is carried on in relation to property of any kind.

*specified investment*

any of the following *investments* specified in Part III of the *Regulated Activities Order* (Specified Investments):

...

(o) *funeral plan contract (article 87)*;

(oa) *regulated mortgage contract (article 61(3))*;

...

## ADDENDUM

### MORTGAGES: CONDUCT OF BUSINESS SOURCEBOOK (CONSEQUENTIAL AMENDMENTS TO THE HANDBOOK) INSTRUMENT 2003

In this Addendum, underlining indicates new text and striking through indicates deleted text.

Annex B of this instrument is amended as follows:

#### Transitional Provisions

...

(1)	(2)	(3)	(4)	(5)	(6)
1	<i>GEN</i> 2.2.7R	R	...		
<del>...</del>					
<u>26</u>	<i>GEN</i> 4.3.1R	R	(1) For the purpose ...	From 31 October ...	Apply in relation to ...
<u>37</u>	<i>GEN</i> 4.3.1R	G	(1) Transitional provision <del>26</del> R defers ...	From 31 October ...	Apply in relation to ...

...

Annex D of this instrument is amended as follows:

2.1.4R            Table: Activities to which *TC 2* applies

	Activity	Extent of application
1. <i>Employees</i> engaging in:	...  <sup>1</sup> Non-advised sales  ( <del>q</del> )    designing scripted questions...	...

...

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<sup>1</sup> Note that '(q) advising on investments' precedes the sub-heading: Non-advised sales.

**BUREAU DE CHANGE INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument under section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

**Commencement**

- B. This instrument comes into force on 1 November 2003.

**Amendments to the Supervision manual**

- C. The Supervision manual is amended as set out in the annex to this instrument.

**Citation**

- D. This instrument may be cited as the Bureau de Change Instrument 2003.

By Order of the Board  
15 October 2003

## Annex

In this Annex, underlining indicates new text. Where new provisions are inserted, the place where they go is indicated but they are not underlined.

After *SUP* 15.8.3R, insert the following new provisions:

### Bureau de change

15.8.4 G (1) In accordance with article 25 of the Money Laundering Regulations 2003, with effect from 1 February 2004, a *firm* is required to notify the *FSA*:

(a) before it begins; and

(b) as soon as reasonably practicable after it ceases;

to operate a bureau de change (within (a) of *money service business*).

(2) The notification referred to in (1) should be made in accordance with the requirements in *SUP* 15.7 (Form and method of notification).

15.8.5 G A *firm* which is already operating a bureau de change as at 1 February 2004 and intends to continue doing so is required by the Money Laundering Regulations 2003 to notify the *FSA* of that fact and should do so in the manner specified in *SUP* 15.8.4G(2).

...

### Schedule 2

#### Notification requirements

...

#### 2 Table

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>SUP</i> 15.8.3R	...			
<u><i>SUP</i> 15.8.4G</u>	<u>Operating a bureau de change</u>	<u>That the <i>firm</i> intends to operate a bureau de change</u>	<u>Intending to operate a bureau de change</u>	<u>Before the <i>firm</i> begins to operate a bureau de change</u>

<u>SUP</u> <u>15.8.4G</u>	<u>Operating a</u> <u>bureau de</u> <u>change</u>	<u>That the <i>firm</i> has ceased to</u> <u>operate a bureau de change</u>	<u>Ceasing</u> <u>to operate</u> <u>a bureau</u> <u>de</u> <u>change</u>	<u>As soon as</u> <u>reasonably</u> <u>practicable</u>
...				

...



## **COMPENSATION SOURCEBOOK (AMENDMENT NO 2) INSTRUMENT 2003**

### **Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 157(1) (Guidance);
  - (4) section 213 (The compensation scheme);
  - (5) section 214 (General);
  - (6) section 215 (Rights of the scheme in relevant person’s insolvency);
  - (7) section 216 (Continuity of long term insurance policies); and
  - (8) section 217 (Insurers in financial difficulties).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

### **Commencement**

- C. This instrument comes into force on 1 December 2003.

### **Amendments to the Compensation sourcebook**

- D. The Compensation sourcebook is amended in accordance with Annex A to this instrument.

### **Amendments to the Glossary**

- E. The Glossary is amended in accordance with Annex B to this instrument.

### **Citation**

- F. This instrument may be cited as the Compensation Sourcebook (Amendment No 2) Instrument 2003.

By Order of the Board

15 October 2003

## Annex A

### Amendments to the Compensation Sourcebook

In this Annex underlining indicates new text and striking through indicates deleted text.

...

Table Transitional Provisions Table

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook Provisions coming into force
7	...				
<u>8</u>	<u>Amendments introduced by the Compensation Sourcebook (Amendment No. 2) Instrument 2003</u>	<u>R</u>	<u>Provisions and definitions arising out of (2) only apply to defaults, or circumstances giving rise to arrangements made under COMP 3.3.1R or to measures taken under COMP 3.3.3R, occurring after the date in (6).</u>	<u>Indefinitely</u>	<u>1 December 2003</u>

...

#### 1.3.3 G Table Areas of particular interest to claimants (see COMP 1.1.3G)

This table belongs to COMP 1.3.3

Q1	What do I need to do in order to receive compensation?
A1	In order to receive compensation:  ...  And you must bring your claim to the <i>FSCS</i> within a set time (normally within six years of the date on which your claim against the <i>relevant person</i> occurred).  ...  COMP 8.2.3R – 8.2.4 <del>5</del> R
Q3	How will the <i>FSCS</i> calculate the compensation that is offered to me?

A3	Again, this will depend on whether your protected claim is a:	
	...	
	(2) a <i>claim</i> under a <i>protected contract of insurance</i> ; or	COMP 12.2.1R, 12.3.2-4R, and 12.4.9R-12.5.24.16R
	...	
Q4	What happens if an <i>insurance undertaking</i> is insolvent?	
A4	If you have a <i>long term insurance contract which is not a reinsurance contract</i> with an insolvent <i>insurance undertaking</i> , the <i>FSCS</i> will first try to secure continuity of insurance for you.	COMP 3.3, 11.2.3R, and 12.4.11R
	If the <i>FSCS</i> achieves this, you will not necessarily receive any cash, but you will continue to be insured (though possibly with lower benefits than before).	COMP 3.3, <del>10.2.6R</del> , and 11.2.23R, and <del>12.5.1R</del>
	You will receive cash compensation only if the <i>FSCS</i> cannot secure continuity of insurance cover or the cost of doing so would be unreasonable.	COMP 3.3.1-2ER, and 11.2.1R
	If you have a <i>relevant general insurance contract which is not a reinsurance contract</i> with an insolvent <i>insurance undertaking</i> , the <i>FSCS</i> will pay you cash compensation if it is unable to secure continuity of insurance cover or the cost of doing so would be unreasonable.	COMP 3.2.1-2R and 11.2.3R
	If the <i>insurance undertaking</i> is in “financial difficulties”, the <i>FSCS</i> may try to arrange for another <i>insurance undertaking</i> to take over the <i>business</i> , or provide the <i>insurance undertaking</i> with financial assistance to carry on business. If this occurs, you will not receive cash compensation, but your policy will continue (though possibly with lower benefits than before).	COMP 3.3.3-6R, <del>10.2.6-7R</del> , and 11.2.3R

...

3.2.1 R The *FSCS* may pay compensation to an *eligible claimant*, subject to *COMP* 11 (Payment of  $\text{€}$ compensation) if it is satisfied that:

...

- (4) in the case of a *claim* under a *protected contract of insurance*:
- (a) it is not reasonably practicable or appropriate to ~~take steps make, or continue to make, arrangements~~ to secure continuity of insurance under *COMP* 3.3.1 R and ~~*COMP* 3.3.4R(1)~~; or
  - (b) it would not be appropriate to ~~take, or continue to take, the measures under *COMP* 3.3.3R specified in *COMP* 3.3.4R(2) to provide assistance to safeguard~~ policyholders of an *insurance undertaking* in financial difficulties.

...

## Securing continuity of long term insurance cover

- 3.3.1 R The *FSCS* must make arrangements to secure continuity of insurance for an *eligible claimant* under a *protected contract of insurance* which is a *long-term insurance contract* with a *relevant person*, if:
- (1) the *relevant person* is the subject of any of the proceedings listed in *COMP 6.3.3R (1)-(5)*;
  - (2) it is reasonably practicable to do so; and
  - (3) the cost of doing so would, in the opinion of the *FSCS* at the time it proposes to make the arrangements, be likely to be no more than the cost of paying compensation under *COMP 3.2.*
- 3.3.2 R ~~The arrangements contemplated by~~ In order to secure continuity of insurance under *COMP 3.3.1R* include arrangements the *FSCS* may take such measures as it considers appropriate to:
- (1) secure or facilitate the transfer of the ~~*long-term insurance business*~~ business of the *relevant person in default* which consists of carrying out *long-term insurance contracts* or any part of that business to another *firm*; and
  - (2) secure the issue of policies by another *firm* to *eligible claimants* in substitution for their existing policies.

Renumber provisions 10.2.6R, 10.2.7R, 12.5.1R and 12.5.2R as, respectively, 3.3.2AR, 3.3.2BR, 3.3.2CR and 3.3.2DR, and amend the text as shown.

- ~~10.2.6~~  
3.3.2A R The *FSCS's* duty under *COMP 3.3.1R* and *COMP 3.3.3R* in respect of a *long term insurance contract* ~~to ensure continuity of cover for any *protected contract of insurance* which is a *long-term insurance contract extends only*~~ is limited to ensuring that the claimant will receive ~~100% of the first £2000 and at least 90% of the remainder of any *future benefit*~~ benefit under his *contract of insurance*, subject to and in accordance with terms corresponding (so far as it appears to the *FSCS* to be reasonable in the circumstances) to those which have applied under the *contract of insurance*.
- ~~10.2.7~~  
3.3.2B R If the *FSCS* secures less than 100% of any benefit of a claimant under a contract, then ~~A~~ *FSCS* must ensure that any future *premiums* that the claimant is committed to paying under the ~~policy~~ contract will be reduced by an equivalent amount.
- ~~12.5.1~~  
3.3.2C R (1) In any period when the *FSCS* is seeking to secure continuity of ~~cover for any policyholder of a relevant person~~ insurance under *COMP 3.3.1R*, ~~the *FSCS* it~~ must secure that ~~100% of the first £2000 and 90% of any benefit~~ under a *long-term insurance contract* which:
- (a) falls due, or would have fallen due, to be paid to any ~~policyholder~~ *eligible claimant*; or
  - (b) had already fallen due to be paid to any *eligible claimant* before the beginning of that period and has not yet been paid;

is paid to the ~~policyholder~~ *eligible claimant* in question as soon as reasonably practicable after the time when the benefit in question fell due, or would have fallen due, under the contract.

- (2) A payment under (1) is made ~~(but~~ subject to and in accordance with any other terms which apply or would have applied under the contract).
- (3) A payment made under (1) is not subject to the FSCS deciding that the cost of making the payment would be likely to be no more than the cost of paying compensation under COMP 3.2.

12.5.2 R ~~A bonus provided under a contract of insurance is not a future benefit for the purposes of COMP 12.5.1R.~~ For the purposes of COMP 3.3.2D ~~3.3.2AR to COMP 3.3.2CR, "benefit" does not include:~~

- (1) any bonus provided for under the contract unless it was declared and vested before the beginning of the liquidation-*insurance undertaking* became the subject of one or more of the proceedings listed in COMP 6.3.3R(1) to (5); or
- (2) any reduction which the FSCS has determined, or any benefit which the FSCS has decided to disregard under COMP 12.4.14 R, to the extent that the FSCS has decided so to treat it.

3.3.2E R Unless the FSCS has decided to treat the liability of the relevant person under the contract as reduced or (as the case may be) disregarded under COMP 12.4.14 R, it must not treat as a reason for failing to secure, or for delaying the securing of, payments under COMP 3.3.2C R at the level prescribed in that rule the fact that:

- (1) it considers that any benefit referred to in COMP 3.3.2C R is or may be excessive in any respect; or
- (2) it has referred the contract in question to an independent actuary under COMP 12.4.13 R; or
- (3) it considers that it may at some later date decide to treat the liability of the relevant person under a contract as reduced or disregarded under COMP 12.4.14 R;

save where the FSCS decides to exclude certain benefits to the extent that they arise out of the exercise of any option under the policy and for this purpose the option includes, but is not restricted to, a right to surrender the policy.

3.3.3 R (1) ~~Where a relevant person is an insurance undertaking in financial difficulties (see COMP 3.3.6 R),~~ The FSCS must may take such measures as it considers appropriate for the purpose of safeguarding the rights of eligible claimants under protected contracts of insurance which are:

(a) general insurance contracts with a relevant person which is an insurance undertaking in financial difficulties (see COMP 3.3.6 R); or

(b) long-term insurance contracts with a relevant person which is an insurance undertaking in financial difficulties (see COMP 3.3.6R) but which is not the subject of any of the proceedings listed in COMP 6.3.3 R (1) to (5);

if at the time it proposes to take the measures, it considers that the cost of doing so is likely to be no more than the cost of paying compensation under COMP 3.2.

(2) Measures under (1) may be taken on such terms (including terms reducing or deferring payment of any liabilities or benefits provided under any protected contract of insurance) as it the FSCS considers appropriate if, in the opinion of the FSCS at the time it proposes to take the measures, the cost is likely to be less than the cost of paying compensation under COMP 3.2.

3.3.4 R The measures contemplated in COMP 3.3.3 R include measures to:

- (1) secure or facilitate the transfer of the business insurance business of the relevant person which consists of carrying out contracts of insurance, or any part of that business, to another firm; and
- (2) give assistance to the relevant person to enable it to continue to effect contracts of insurance or carry out contracts of insurance; and
- (3) secure the issue of policies by another firm to eligible claimants in substitution for their existing policies.

3.3.4A R If it thinks appropriate, the FSA may in relation to any insurance undertaking which is in financial difficulties:

- (1) give the FSCS assistance in determining what measures under COMP 3.3.3 R are practicable or desirable;
- (2) impose constraints on the measures which may be taken by the FSCS under COMP 3.3.3 R;
- (3) require the FSCS to provide it with information about any measures which it is proposing to take under COMP 3.3.3 R.

- 3.3.5R ~~Before the FSCS takes the measures described in COMP 3.3.3R for the purpose of safeguarding an eligible complainant in respect of a protected contract of insurance that is a long-term insurance contract, it must:~~
- ~~(1) reduce the eligible claimant's interest in the protected contract of insurance to 90% of the amount which would otherwise have been payable under the terms of the contract; and~~
  - ~~(2) reduce all premiums under the contract which have not fallen due before the time when the reduction is to take effect to 90% of the amount which would otherwise have been payable. [deleted]~~
- 3.3.6 R For the purpose of COMP 3.3.3R and COMP 3.3.4AR, a *relevant person* ~~who~~ which is an *insurance undertaking* is in financial difficulties if any of the following events occurs:
- (1) it is in provisional liquidation a liquidator, administrator, provisional liquidator, administrative receiver or interim manager is appointed to the relevant person, or a receiver is appointed by the court to manage the relevant person's affairs; or
  - (2) it has proved, in any proceedings on a petition for the winding up of the relevant person under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 for the voluntary winding up of the relevant person (or any analogous proceedings pursuant to the law of any other jurisdiction), to be unable to pay its debts there is a finding by a court of competent jurisdiction that the relevant person is unable to pay its debts; or
  - (3) an application has been made to the court under section 425 of the Companies Act 1985 or Article 418 of the Companies (Northern Ireland) Order 1986 for the sanctioning of a compromise or arrangement proposed between the relevant person and its creditors or any class of them and the terms of the compromise or arrangement provide for reducing, or deferring payment of, the liabilities or the benefits provided for under any of the relevant person's policies a resolution is passed for winding up of the relevant person, unless a declaration of solvency has been made in accordance with section 89 of the Insolvency Act 1986; or
  - (4) the FSA determines that the relevant person ~~who is an insurance undertaking~~ is unable or likely to be unable to satisfy protected claims against it; or
  - (5) approval is given to any company voluntary arrangement made by the relevant person; or
  - (6) the relevant person makes a composition or arrangement with any one or more of its creditors providing for the reduction of, or deferral of payment of, the liabilities or benefits provided for under any of the relevant person's policies; or

- (7) the relevant person is dissolved or struck off from the Register of Companies; or
- (8) a receiver is appointed over particular property of the relevant person; or
- (9) any of (1) to (8) or anything equivalent occurs in respect of the relevant person in a jurisdiction outside England and Wales.

### **Assessing the costs of paying compensation**

3.3.7 R For the purposes of COMP 3.3.1R(3) and COMP 3.3.3R(1), when assessing the cost of paying compensation under COMP 3.2 FSCS may have regard to the likely total cost of paying compensation arising out of the default, not just the compensation amounts likely to be payable to particular eligible claimants covered by the proposed arrangements for continuity.

...

5.4.2 R A contract of insurance issued after commencement which:

- (1) relates to a protected risk or commitment as described in COMP 5.4.3R;
- (2) is issued by the *relevant person* through an establishment in;
  - (a) the *United Kingdom*; or
  - (b) another *EEA State*; or
  - (c) the Channel Islands or the Isle of Man; ~~and~~
- (3) is a *long-term insurance contract* or a *relevant general insurance contract*; and
- (4) is not a reinsurance contract;

is a *protected contract of insurance*.

...

5.4.5 R (1) ~~If the default of the relevant person occurs after commencement, a relevant person is subject to one or more of the proceedings listed in COMP 6.3.3R or is declared in default, then a contract of insurance issued by a that relevant person before commencement which is within COMP 5.4.5R(2) is a protected contract of insurance, provided that:~~

- (a) (unless it comes within (b)) at the earlier of the events in (1) it was a “United Kingdom policy at the beginning of the liquidation” for the purposes of the Policyholders Protection Act 1975;
- (b) if the *contract of insurance* is a contract of employers’ liability insurance entered into before 1 January 1972 or



(for contracts in Northern Ireland) 29 December 1975, and the *claim* was agreed after the default of the *insurer*, the risk or commitment was situated in the *United Kingdom* (as set out in *COMP 5.4.4R*).

- (2) The *contracts of insurance* referred to in *COMP 5.4.5R(1)* are:
- (a) a *relevant general insurance contract*;
  - (b) a *contract of insurance* within the *credit* class; and
  - (c) a *long-term insurance contract*;
- which in each case is not a *reinsurance contract*.

...

5.4.7 R The *FSCS* must treat liabilities of an *insurance undertaking* which is *in default*, in respect of the following items, as giving rise to *claims* under a *protected contract of insurance*:

- (1) (if the contract is not a *reinsurance contract* and has not commenced) *premiums* paid to the *insurance undertaking*; or
- (2) proceeds of a *long-term insurance contract* that is not a *reinsurance contract* and that has matured or been surrendered ~~but~~ which have not yet been passed to the claimant; or
- (3) the unexpired portion of any *premium* in relation to *relevant general insurance contracts* which are not *reinsurance contracts*; or
- (4) *claims* by *persons* entitled to the benefit of a judgement under section 151 of the Road Traffic Act 1988 or Article 98 of the Road Traffic (Northern Ireland) Order 1981.

...

7.2.3 R ~~The *FSCS* must make such recoveries as it reasonably can through the rights so assigned.~~

- (1) Before taking assignment of rights from the claimant under *COMP 7.2.1R*, the *FSCS* must inform the claimant that if, after taking assignment of rights, the *FSCS* decides not to pursue recoveries using those rights it will, if the claimant so requests in writing, reassign the assigned rights to the claimant. The *FSCS* must comply with such a request in such circumstances.
- (2) If the *FSCS* takes assignment of rights from the claimant under *COMP 7.2.1R*, it must pursue all and only such recoveries as it considers are likely to be both reasonably possible and cost effective to pursue.
- (3) If the *FSCS* makes recoveries through rights assigned under *COMP 7.2.1R*, it may deduct from any recoveries paid over to the claimant under *COMP 7.2.4R* part or all of its reasonable costs of recovery (if any).

...

9.2.2 R The FSCS may postpone paying compensation if:

...

(5) the claimant has been charged with an offence arising out of or in relation to money laundering, and those proceedings have not yet been concluded; or

(6) the claim relates solely to a bonus provided for under a protected contract of insurance the value of which the FSCS considers to be of such uncertainty that immediate payment of compensation in respect of that bonus would not be prudent and a court has yet to attribute a value to such bonus.

...

10.2.2 G ... Similarly if a claimant receives more than one payment in respect of a claim or claims on one or more protected contract of insurance, the claimant will only receive 100% of the first £2,000 of the total paid, and not 100% of the first £2,000 of each payment.

10.2.3 R Table: Table Limits

This table belongs to COMP 10.2.1R

Type of claim	Level of cover	Maximum payment
...		
<i>Protected contract of insurance when the contract is a long-term insurance contract</i>	100% x first £2,000 At least 90% of the remaining value of the policy <u>as determined in accordance with COMP 12 (including future benefits declared before the date the relevant person is determined to be in default).</u>	Unlimited
...		

...

10.2.6 R [deleted]

10.2.7 R [deleted]

...

11.2.1 R If the FSCS determines that compensation is payable, it must pay it to the claimant or as directed by the claimant, unless:

- (1) arrangements have or are being made to secure continuity of insurance under COMP 3.3.1 R ~~and~~ to COMP 3.3.2E R or the FSCS is taking measures it considers appropriate to safeguard eligible claimants under COMP 3.3.3 R to COMP 3.3.6 R; or
- (2) COMP 11.2.2 R or COMP 11.2.3 R applies.

11.2.3 R Where an *eligible claimant* has a *claim* under a *protected contract of insurance* against a *relevant person* that is in administration, provisional liquidation, or liquidation, the *FSCS* may, unless arrangements have been or are being made to secure continuity of insurance or other measures are being taken to safeguard eligible claimants, under ~~COMP 3.3.1R and COMP 3.3.2R~~ or the *FSCS* is ~~taking measures it considers appropriate under COMP 3.3.3R to COMP 3.3.6R:~~

- (1) make payments to or on behalf of *eligible claimants* on such terms (including any terms requiring repayment in whole or in part) and on such conditions as it thinks fit (subject to *COMP* 10); or
- (2) secure that payments (subject to *COMP* 10) are made to or on behalf of any such *eligible claimants* by the liquidator, administrator or provisional liquidator by giving him an indemnity covering any such payments or any class or description of such payments.

11.2.4 R If the *FSCS* is satisfied that in principle compensation is payable in connection with any protected claim, but considers that immediate payment in full would not be prudent because of uncertainty as to the amount of the claimant's overall net *claim*, it may decide to pay an appropriate lesser sum in final settlement, or to make payment on account.

...

11.2.6A G COMP 11.2.4R applies to compensation payable in connection with any protected claim. It would, for example, apply to the situation where the FSCS considers it imprudent to make a payment in full because of uncertainty as to the value a court might attribute to a bonus provided for under a long-term insurance contract. In such circumstances the FSCS may make payment of compensation on account to the policyholder in respect of benefits under the contract the value of which is not uncertain.

...

12.2.7 R In calculating the claimant's overall net *claim*, the *FSCS* must take into account any payments to the claimant (including amounts recovered by the *FSCS* on behalf of the claimant) made by the *relevant person* or the *FSCS* or any other *person*, if that payment is connected with the *relevant person's* liability to the claimant.

12.2.8 R The FSCS must calculate the amount of compensation due to the claimant as soon as reasonably possible after it is satisfied that the conditions in COMP 3.2.1 have been met.

...

12.4.11 R Unless the *FSCS* is making arrangements to secure continuity of insurance cover under *COMP 3.3.1R* to ~~and~~ *COMP 3.3.2ER*, the *FSCS* must calculate the liability of a *relevant person* to the claimant under a *long-term insurance contract* in accordance with the terms of the contract as valued in a liquidation of the *relevant person*, or (in the absence of such relevant terms) in accordance with such reasonable valuation techniques as the *FSCS* considers appropriate; ~~and (subject to any limits in *COMP 10.2.3R* and to *COMP 12.4.14R*) pay that amount to the claimant.~~

- 12.4.11A R (1) Unless the *FSCS* is seeking to secure continuity of cover for a *relevant person* under *COMP 3.3.1* to *COMP 3.3.2ER*, it must:
- (a) pay compensation in accordance with *COMP 12.4.11R* for any benefit provided for under a protected *long-term insurance contract* which has fallen due or would have fallen due under the contract to be paid to any *eligible claimant* and has not already been paid; and
  - (b) do so as soon as reasonably practicable after the time when the benefit in question fell due or would have fallen due under the contract (but subject to and in accordance with any other terms which apply or would have applied under the contract).
- (2) If the *FSCS* decides to treat the liability of the *relevant person* under the contract as reduced or (as the case may be) disregarded under *COMP 12.4.14R* then, for the purposes of (1), the value of benefits falling due after the date of that decision must be treated as reduced or disregarded to that extent.
- (3) Unless it has decided to treat the liability of the *relevant person* under the contract as reduced or disregarded under *COMP 12.4.14R* the *FSCS* must not treat as a reason for failing to pay, or for delaying the payment of compensation in accordance with (1), the fact that:
- (a) it considers that any benefit referred to in (1) is or may be excessive in any respect; or
  - (b) it has referred the contract in question to an independent actuary under *COMP 12.4.13R*; or
  - (c) it considers that it may at some later date decide to treat the liability of the *relevant person* under a contract as reduced or (as the case may be) disregarded under *COMP 12.4.14R*;
- save where the *FSCS* decides to exclude certain benefits to the extent that they arise out of the exercise of any option under the

policy (for this purpose option includes, but is not restricted to, a right to surrender the policy).

12.4.12 R The *FSCS* must not treat any bonus provided for under a *long-term insurance contract* as part of the claimant's claim ~~unless it was declared before the beginning of the liquidation.~~ except to the extent that:

- (1) a value has been attributed to it by a court in accordance with the Insurers (Winding Up) Rules 2001 or any equivalent rules or legislative provision in force from time to time; or
- (2) the *FSCS* considers that a court would be likely to attribute a value to the bonus if it were to apply the method set out in those rules.

12.4.13 R (1) If the *FSCS* is:

(a) seeking to secure continuity of cover under COMP 3.3.1R to COMP 3.3.2ER or to calculate the liability owed to an eligible claimant under COMP 12.4.11R; and

(b) considers that the benefits ~~or future benefits~~ provided for under a protected *long term insurance contract* ~~issued by a relevant person~~ are or may be excessive in any respect, having regard to the ~~premiums paid or payable and to any other terms of the contract;~~

the *FSCS* it must refer the contract to an actuary who is independent of the ~~claimant~~ eligible claimant and of the relevant person ~~in default~~.

(2) In this rule and in COMP 12.4.14R, a benefit is only "excessive" if, at the time when the *relevant person* decided to confer or to offer to confer that benefit, no reasonable and prudent *insurer* in the position of the *relevant person* would have so decided given the *premiums payable* and other contractual terms.

12.4.14 R If the *FSCS* is satisfied, following the actuary's written recommendation, that any of the benefits provided for under the contract are or may be excessive, it may treat the liability of the *relevant person* under the contract as reduced or (as the case may be) disregarded for the purpose of any payment made after the date of that decision.

...

**Quantification when the *FSCS* is seeking to secure continuity of insurance cover**

12.5.1 R [deleted]

12.5.2 R [deleted]

...

13.2.12 G *Compensation costs* are principally the costs incurred in paying compensation, Costs incurred in securing continuity of long-term insurance and, in safeguarding eligible claimants when insurers are in financial difficulties, and in making payments or giving indemnities under COMP 11.2.3R are also treated as *compensation costs*. For funding purposes, these costs are allocated by the *FSCS*, and met by *participant firms*, in the same way as *specific costs*: see *COMP 13.6.6R*.

## Annex B

### Amendments to the Glossary

In this Annex underlining indicates new text and striking through indicates deleted text. The place where the new definition goes is indicated but it is not underlined.

Insert the following new definition in the appropriate alphabetical position:

*reinsurance contract* (in *COMP*) a *contract of insurance* covering all or part of a risk to which a *person* is exposed under a *contract of insurance*.

#### Amendments to the Glossary

*claim* (1) (in *COMP*) a valid claim made in respect of a civil liability owed by a *relevant person* to the claimant subject to *COMP* 8.2.5R (claims extinguished by operation of law).

(2) ...

*compensation costs* the costs incurred;  
(a) in paying compensation; or  
(b) ~~or as a result of making the arrangements set out contemplated in *COMP* 3.3.1R or taking the measures set out contemplated in *COMP* 3.3.3R;~~ or  
(c) in making payments or giving indemnities under *COMP* 11.2.3R.

*future benefit* ~~(in *COMP*) any benefit, provided by a long term insurance contract under which a company in liquidation owes obligations, which has not fallen due to be paid before the beginning of the liquidation.~~

*relevant general insurance contract* (in *COMP*) any *general insurance contract* other than:  
(a) ~~a reinsurance contract;~~ [deleted]  
(b) *a Lloyd's policy*;  
(c) a contract falling within any of the following classes:  
(i) *aircraft*;  
(ii) *ships*;  
(iii) *goods in transit*;  
(iv) *aircraft liability*;  
(v) *liability of ships*;  
(vi) *credit*.

## LLOYD'S COMPENSATION INSTRUMENT 2003

### Powers exercised

- A. The Financial Services Authority gives the directions issued under sections 316 and 318 of the Financial Services and Markets Act 2000 ("the Act") as set out in the amendments to the Lloyd's sourcebook in this instrument.
- B. The Financial Services Authority amends the Compensation sourcebook and the Glossary in the exercise of the following powers and related provisions in the Act:
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 157 (Guidance);
  - (4) section 213 (The compensation scheme);
  - (5) section 214 (General);
  - (6) section 215 (Rights of the scheme in relevant person's insolvency);
  - (7) section 216 (Continuity of long-term insurance policies);
  - (8) section 217 (Insurers in financial difficulties); and
  - (9) section 223 (Management expenses).
- C. The rule-making powers listed in B above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

### Commencement

- D. This instrument comes into force as follows:
- (1) Annex B (Amendments to the Compensation Sourcebook) and Annex C (Amendments to the Glossary) to this instrument come into force on 1 January 2004;
  - (2) the remainder of this instrument comes into force immediately.

### Amendments to the Lloyd's sourcebook

- E. The Lloyd's sourcebook is amended in accordance with Annex A to this instrument.

### Amendments to the Compensation sourcebook

- F. The Compensation sourcebook is amended in accordance with Annex B to this instrument.

### Amendments to the Glossary

- G. The Glossary is amended in accordance with Annex C to this instrument.

### Citation

- H. This instrument may be cited as the Lloyd's Compensation Instrument 2003.

By order of the Board  
15 October 2003



## Annex A

### Amendments to the Lloyd's sourcebook

In this Annex underlining indicates new text and striking through indicates deleted text. Where an entire new section is inserted, the place that it goes is indicated and the text is not underlined.

3.1 (heading)      **Application ~~and~~ purpose and enabling provision**

...

**Enabling provision**

3.1.4    D      The directions in this chapter are given under section 318 of the *Act* (Exercise of powers through Council) for the purpose of achieving the objective specified, as required by section 318(2) of the *Act*.

3.1.5    D      The directions given in this chapter are given in relation to the exercise of the powers by the *Society* in respect of the *Central Fund* and are given with a view to achieving the objective of ensuring that the *Society* in making payments or in providing any other financial assistance from the *Central Fund* does so on a basis which takes no account of amounts of compensation which policyholders may receive under the provisions of the *compensation scheme* in respect of *protected claims* against *members*.

...

3.2.1    G      The *Society* should seek to ensure that the *Central Fund* provides protection for policyholders ~~at least equivalent to that available to other policyholders under the *compensation scheme*~~ so as to minimise the need for Lloyd's policyholders to have recourse to the *compensation scheme*.

...

3.2.3    D      The *Society* must, in the exercise of its powers to make payments from the *Central Fund* or to provide other forms of financial assistance from the *Central Fund*, ensure that in calculating and determining the amount of any such payment or the amount of any other financial assistance, it takes no account of the amounts of compensation which policyholders may receive under the provisions of the *compensation scheme* in respect of *protected claims* against *members*.

...

After *LLD 8* insert the following new chapter:

8A (heading)	<b>Compensation Arrangements for policyholders</b>
8A.1 (heading)	<b>Enabling provision, application and purpose.</b>
8A.1.1 G	<p><b>Enabling provision and application</b></p> <p>The <i>insurance market direction</i> in this chapter is given under section 316(1) of the <i>Act</i> (Direction by Authority) and applies to <i>members</i>.</p> <p><b>Purpose</b></p>
8A.1.2 G	<p>The <i>insurance market direction</i> in this chapter is intended to protect the interests of <i>policyholders</i> and potential <i>policyholders</i> by:</p> <ol style="list-style-type: none"> <li>(1) providing for the application of the <i>compensation scheme</i> in respect of <i>contracts of insurance</i> issued by <i>members</i>; and</li> <li>(2) providing for the application of such other provisions of the <i>Act</i> as will enable the application of the <i>compensation scheme</i> to be effective in relation to insurance market activities carried on by <i>members</i>.</li> </ol>
8A.2	<b>Insurance market direction on policyholder compensation.</b>
8A.2.1 D	<p>With effect from 15 October 2003 the following <i>core provisions</i> of the <i>Act</i> apply to the carrying on of <i>insurance market activities</i> by <i>members</i>:</p> <ol style="list-style-type: none"> <li>(1) Part X (Rules and guidance) for the purpose of applying the rules in <i>COMP</i> and relevant interpretative provisions; and</li> <li>..</li> <li>(2) Part XV (Financial Services Compensation Scheme).</li> </ol>
8A.2.2G	<p>Section 317(2) of the <i>Act</i> (The core provisions) provides that references in an applied <i>core provision</i> to an <i>authorised person</i> are to be read as references to a <i>person</i> in the class to which the <i>insurance market direction</i> applies. In particular, with effect from 15 October 2003, references to a <i>relevant person</i> in Part XV of the <i>Act</i> include a person who was a <i>member</i> at the time the act or omission giving rise to the claim against him took place.</p>

## Annex B

### Amendments to the Compensation Sourcebook

In this Annex underlining indicates new text and striking through indicates deleted text. Where an entire new section is inserted, the place that it goes is indicated and the text is not underlined.

After Transitional Provision 8, insert the following new Transitional Provision.

Table Transitional Provisions Table

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook Provisions coming into force
...					
9	<i>COMP</i> 13.6.8R	R	<p>With regard to a <i>member, relevant net premium income</i> is to include the premium income in respect of <i>contracts of insurance</i>:</p> <p>(a) Entered into by the <i>member</i> in the year preceding that in which the date for submission of the information under <i>COMP</i> 13.6.11R falls; and</p> <p>(b) Which would have been <i>protected contracts of insurance</i> if entered into on or after 1 January 2004;</p> <p><b>net of any relevant rebates or refunds.</b></p>	1 January 2004 to 1 January 2005	<b><i>Commencement</i></b>

After *COMP* 1.4, insert the following new section:

1.5 (heading)      **Application to Lloyd's**

1.5.1      G      The *FSA* has exercised its power under section 316 of the *Act* (Direction by Authority) to direct in *LLD* 8A (Compensation Arrangements for policyholders) that certain *core provisions* in the *Act* should apply to *members* of the *Society* of Lloyd's (an “*insurance market direction*”). The effect of the direction is that the *FSA* may, in relation to *members*, and in respect of *insurance market activities* carried on by them, exercise any of the statutory powers conferred by the provisions which are applied by the direction. Those include the powers in Part X to make general *rules* and give *guidance* and also the powers in Part XV to make *rules* for the establishment and operation of a compensation scheme. Accordingly this sourcebook makes provision for the payment of compensation by the *FSCS* in certain cases arising from *insurance business* carried on by *members*, and for raising levies on the *Society*.

1.5.2      R      Notwithstanding anything to the contrary in this sourcebook, in relation to the *Society*, *members* and *Lloyd's policies* *FSCS* must act, so far as is reasonably practicable, to ensure that:

- (1)              *Eligible claimants* have protection under this sourcebook in relation to *Lloyd's policies* equivalent to that otherwise afforded to *eligible claimants* by the *FSCS*;
- (2)              *FSCS* does not meet *claims* in relation to *Lloyd's policies* unless the *Central Fund* is unlikely to be able to meet them;
- (3)              *Claims* against *members* under the *compensation scheme* which arise from the same loss under the same *Lloyd's policy* must be treated as a single *claim*;
- (4)              any recovery resulting from the exercise of any rights assigned to the *FSCS* in connection with the payment of compensation to an *eligible claimant*, is treated by the *FSCS* in accordance with *COMP* 7.2.4R, and any such recovery which is not paid to the claimant in accordance with that rule, is used for the benefit of *FSCS* in priority to any interest that the *Society* may have.

1.5.3      G      The effect of *COMP* 1.5.2 R(4) and *COMP* 7.2.4AR, and subject to 7.2.4 R(2), is that any recovery obtained by *FSCS* is retained by *FSCS* up to an amount equal to the cost to *FSCS* of paying compensation. To the extent that the *Society* is entitled to any part of the recovery (for example by agreement with *FSCS*) it is only paid out of any excess up to a maximum amount equal to that paid out of the *Central Fund*. Any recovery in excess of the compensation (including payment from the *Central Fund*) received by the policyholder is paid to the claimant in accordance with *COMP* 7.2.4R regardless of whether the *Society* receives the full amount paid from the *Central Fund*.

...

3.3.1 R The *FSCS* must make arrangements to secure continuity of insurance for an *eligible complainant* under a *protected contract of insurance* which is a *long term insurance contract* with a *relevant person*, if:

...

- (2) it is reasonably practical to do so; ~~and~~
- (3) the cost of doing so would, in the opinion of the *FSCS* at the time it proposes to make the arrangements, be likely to be no more than the cost of paying compensation under *COMP 3.2*; and
- (4) where the *relevant person* is a *member*, the *FSCS* is satisfied that the amounts which the *Society* is able to provide from the *Central Fund* are or are likely to be insufficient to ensure that *claims* against the *member* under a *protected contract of insurance* will be met to the level of protection which would otherwise be available under this sourcebook.

...

3.3.6 R For the purpose of *COMP 3.3.3R*, a *relevant person*, who is an *insurance undertaking* is in financial difficulties if:

...

- (4) the *FSA* determines that the *relevant person* who is an *insurance undertaking* is likely to be unable to satisfy *protected claims* against it; or

...

- (9) any of (1) to (8) or anything equivalent occurs in respect of the *relevant person* in a jurisdiction outside England and Wales; or
- (10) in the case of an *insurance undertaking* which is a *member*, the *FSCS* is satisfied that any of sub-paragraphs (1) to (9) apply to the *member*, and the amounts which the *Society* is able to provide from the *Central Fund* are or are likely to be insufficient to ensure that *claims* against the *member* under a *protected contract of insurance* will be met to the level of protection which would otherwise be available under this sourcebook.

...

5.4.2 R A *contract of insurance* issued after *commencement* which:

...

- (2) is issued by the *relevant person* through an establishment in the Channel Islands or the Isle of Man; ~~and~~
- (3) is a *long-term insurance contract* or a *relevant general insurance*

*contract; and*

- (4) is not a reinsurance contract; and
- (5) if it is a contract of insurance entered into by a member, was entered into on or after 1 January 2004;

is a *protected contract of insurance*.

...

- 5.4.5 R (1) If after *commencement*, a relevant person is subject to one or more of the proceedings listed in *COMP 6.3.3R* or is declared *in default*, then a *contract of insurance* issued by that *relevant person* before *commencement* which is within *COMP 5.4.2R(2)* is a *protected contract of insurance*, provided that the relevant person was not a member at the time the contract of insurance was issued, and:
- (a) (unless it comes within (b)) at the earlier of the events in (1) it was a “United Kingdom policy” for the purposes of the Policyholders Protection Act 1975;

...

...

- 6.3.2 R Subject to *COMP 3.3.3R* to *COMP 3.3.6 R* and *COMP 6.3.6R*, the *FSCS* (or, where *COMP 6.3.1R(2)(a)* applies, the *FSA*) may determine a *relevant person* to be *in default* when it is, in the opinion of the *FSCS* or the *FSA*:

...

- 6.3.3 R Subject to *COMP 6.3.6R*, the *FSCS* may determine a *relevant person* to be in default if it is satisfied that a *protected claim* exists (other than an *ICD claim* or *DGD claim*), and *the relevant person* is the subject of one or more of the following proceedings in the *United Kingdom* (or of equivalent or similar proceedings in another jurisdiction):

...

...

### **Members in default and the Central Fund of the Society**

- 6.3.6 R The *FSCS* may not declare a *member* to be in default unless it is satisfied that the amounts which the *Society* may provide from the *Central Fund* are or are likely to be insufficient to ensure that *claims* against the *member* under a *protected contract of insurance* will be met to the level of protection which would otherwise be available under this sourcebook.

- 6.3.7 G If a *member* is unable fully to meet *protected claims* against it then in the first instance any shortfall will be avoided by payments by the *Society* from the assets of the *Central Fund*. The *FSCS* will not consider *claims* for compensation unless it is satisfied that the amounts which the *Society*

will make available from the *Central Fund* are or are likely to be insufficient to ensure that *claims* against the *member* under a *protected contract of insurance* will be met to the level of protection which would otherwise be available under this sourcebook. The amount which the *FSCS* may pay in respect of any such *claim* will be limited to the difference between the amount which the claimant will receive, or is expected to receive, from the *member* and the *Society* together and the maximum amount of compensation payable in accordance with *COMP 10* and *COMP 12*.

...

7.2.4A R For the purposes of *COMP 7.2.4R* compensation received by *eligible claimants* in relation to *Lloyd's policies* may include payments made from the *Central Fund*.

...

10.2.8 R **Claims against more than one member in respect of a single protected contract of insurance to be treated as a single claim**

In applying the financial limits in *COMP 10.2*, and in calculating the amount of a *claim* in respect of a *protected contract of insurance* arising from the default of one or more *members*, a *policyholder* is to be treated as having a single *claim* for the aggregate of all such amounts as may be payable on the *claim* in respect of the *protected contract of insurance*.

...

12.2.9 R In calculating the claimant's overall net *claim* the *FSCS* must take into account the amounts paid by, or expected to be paid by, the *Society* from the *Central Fund* to meet a *member's* liabilities under the contract which gives rise to the *claim*.

...

13.1.1 R This chapter applies to:

- (1) every *participant firm*; and
- (2) the *FSCS*; and
- (3) the *Society*.

13.1.2 G Although a *member* is a *participant firm* for the purposes of most provisions of *COMP*, a *member* is excluded from the definition of *participant firm* for the purposes of *COMP 13* (see definition of *participant firm* in the *Glossary*). This is because the fees levied in relation to the carrying on of *insurance market activities* by *members* will be imposed on the *Society* rather than individually on each *member* (see *COMP 13.4.21R*).

...

**Levies on the Society of Lloyd's**

13.4.21 R

The FSCS may impose a levy on the Society to be calculated as the aggregate of the levies that would be imposed on each member if this chapter applied to members, as follows:

- (a) a share of any un-expired portion of an establishment costs levy;
- (b) a proportionate share of a base costs levy in respect of the compensation scheme's costs for the period from 1 January 2004 to the end of the compensation scheme's financial year and a share of such levies for all subsequent financial years;
- (c) a specific costs levy and a compensation costs levy in respect of costs arising out of a relevant person being in default, arrangements made under COMP 3.3.1R or measures taken under COMP 3.3.3R where the default occurs or the circumstances giving rise to the arrangements being made or the measures being taken, as the case may be, occur after 1 January 2004.



## Annex C

### Amendments to the Glossary

Insert the following new definition in the appropriate alphabetical position:

*insurance market activity* means a *regulated activity* relating to *contracts of insurance* written at Lloyd's.

Amend the following definitions as shown (underlining indicated new text and striking through indicates deleted text):

*insurance undertaking* an undertaking, or (in COMP) a member, whether or not an *insurer*, which carries on *insurance business*.

*participant firm* (1) (except in COMP 13) a *firm* or a member other than:

- (a) (in accordance with section 213(10) of the *Act* (The compensation scheme) and regulation 2 of the *Electing Participants Regulations* (Persons not to be regarded as relevant persons) an incoming *EEA firm* which is:
  - (i) a *credit institution*;
  - (ii) an *ISD investment firm*; or
  - (iii) both (i) and (ii);in relation to its *passported activities*, unless it has *top-up cover*;
- (b) a *service company*;
- (c) ~~[deleted] the Society, in respect of activities included in its permission under section 315(2) of the Act (The Society: authorisation and permission);~~
- (d) ~~[deleted] a member, in respect of effecting or carrying out Lloyd's policies;~~
- (e) an *underwriting agent*, or *members' adviser*, in respect of *advising on syndicate participation at Lloyd's* or *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's*;
- (f) an *authorised professional firm* that is subject to the rules of the Law Society (England and Wales) or the Law Society of Scotland;
- (g) an *ICVC*;
- (h) a *UCITS qualifier*;
- (i) an *ELMI* in relation to *issuing e-money*.

(2) (in COMP 13) a *firm* specified in paragraph (1) above that is not a *member*.

*relevant general insurance contract* (in COMP) any *general insurance contract* other than:

- (a) a reinsurance contract;
- (b) ~~[deleted]~~ a *Lloyd's policy*;
- (c) a contract falling within any of the following classes:
  - (i) *aircraft*;
  - (ii) *ships*;
  - (iii) *goods in transit*;
  - (iv) *aircraft liability*;
  - (v) *liability of ships*;
  - (vi) *credit*.

**LISTING RULES (TREASURY SHARES) INSTRUMENT 2003****Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act (“the Act”):
- (1) section 74 (The official list);
  - (2) section 101 (Listing rules: general provisions); and
  - (3) section 157(1) (Guidance).

**Commencement**

- B. This instrument comes into force on 1 December 2003.

**Amendments to the Listing Rules**

- C. The Listing Rules are amended in accordance with Annex A to this instrument.

**Guidance**

- D. The UKLA Guidance Manual is amended in accordance with Annex B to this instrument.

**Citation**

- E. This instrument may be cited as the Listing Rules (Treasury Shares) Instrument 2003.

By Order of the Board  
15 October 2003

## Annex A

### Amendments to the Listing Rules

#### Part I- Text of principal additions and amendments to Chapter 15 of the Listing Rules

In this Annex underlining indicates new text and striking through indicates deleted text. Where an entire new section of text is being inserted, the place where it goes is indicated and it is not underlined.

...

15.9 Any purchase of the company's own equity shares by or on behalf of the company, or any other member of its group must be notified to a Regulatory Information Service as soon as possible and in any event no later than 7.30am on the business day following the calendar day on which that purchase occurred. The notification must include:

- (a) the date of the purchase;
- (b) the number of equity shares purchased; ~~and~~
- (c) the purchase price for each of the highest and lowest prices paid, where relevant;
- (d) a statement as to what number of the equity shares were purchased for cancellation and what number were purchased in order to be held as treasury shares; and
- (e) where equity shares were purchased to be held as treasury shares, a statement of:
  - (i) the total number of treasury shares of each class held by the company following the purchase and non-cancellation of such equity shares; and
  - (ii) the number of shares of each class that the company has in issue less the total number of treasury shares of each class held by the company following the purchase and non-cancellation of such equity shares.

...

15.15 Any purchases, early redemptions or cancellations of the company's own listed securities other than equity shares by or on behalf of the company or any other member of the group of which it is part must be notified to a Regulatory Information Service when an aggregate of 10% of the initial amount of the relevant class of securities has been purchased, redeemed or cancelled and for each 5% in aggregate of the initial amount of that class acquired thereafter. Such notifications must be made as soon as possible and in any event no later than 7.30am on the business day following the calendar day on which the relevant threshold is reached or exceeded.

The notification must state the amount of securities acquired, redeemed or cancelled since the last such notification, the amount of the class of securities remaining outstanding and whether or not the securities are to be cancelled. In addition, where the company purchases or makes an early redemption of shares other than equity shares, the notification must also include:

- (a) a statement as to what number of the shares were purchased or redeemed early for cancellation and what number were purchased in order to be held as treasury shares; and
- (b) where shares were purchased to be held as treasury shares, a statement of:
  - (i) the total number of treasury shares of each class held by the company following the purchase and non-cancellation of such shares; and
  - (ii) the number of shares of each class that the company has in issue less the total number of treasury shares of each class held by the company following the purchase and non-cancellation of such shares.

After 15.18, insert the following new text.

## **Treasury Shares**

### **Model Code**

- 15.19 (a) Sales for cash, or transfers for the purposes of or pursuant to an employees' share scheme, of treasury shares must not be made at a time when, under the provisions of the Model Code, a director of the company would be prohibited from dealing in the securities of that company.
- (b) The prohibition in paragraph 15.19(a) does not apply to sales or transfers by a company of treasury shares in the circumstances set out below:
- (i) transfers of shares arising out of the operation of an employees' share scheme into a saving scheme investing only in securities of the listed company following:
    - (a) exercise of an option under a savings related share option scheme; or
    - (b) release of shares from a profit sharing scheme;
  - (ii) with the exception of a disposal of securities received by a director as a participant, dealings in connection with an Inland Revenue approved "Save-as-you-earn" share option scheme, or any other employees' shares scheme under which participation is extended, on similar terms to those contained in an Inland Revenue approved "Save-as-you-earn" share option scheme, to all or most employees of the participating companies in that scheme;

- (iii) with the exception of a disposal of securities received by a director as a participant, dealing in connection with an Inland Revenue approved profit share scheme, or any similar profit share scheme under which participation is extended, on similar terms to those contained in an Inland Revenue approved profit share scheme, to all or most employees of the participating companies in that scheme;
- (iv) arrangements which involve a sale of securities in the listed company with the intention of making a matched purchase of such securities on the next business day;
- (v) transfers of shares already held by means of a matched sale and purchase into a saving scheme or into a pension scheme in which the relevant directors is a participant or beneficiary;
- (vi) the cancellation or surrender of an option under an employees' share scheme; and
- (vii) transfers of securities by an independent trustee of an employees' share scheme to a beneficiary who is not a director or a relevant employee.

15.20 The prohibition in paragraph 15.19 does not apply to sales or transfers by a company of treasury shares belonging to a class whose price or value would not be likely to be substantially affected by the publication of the information giving rise to the prohibited period. However, this paragraph does not permit the sale or transfer of treasury shares that are either equity shares or shares belonging to a class whose price or value is ordinarily affected by the knowledge of major new developments in the company's sphere of activity.

**Notification of capitalisation issues and of sales, transfers and cancellations of treasury shares**

15.21 If, by virtue of it holding treasury shares, the company is allotted shares as part of a capitalisation issue, the company must notify a Regulatory Information Service as soon as possible and in any event no later than 7.30am on the business day following the calendar day on which allotment occurred. The notification must state:

- (a) the date of the allotment;
- (b) the number of shares allotted;
- (c) a statement as to what number of the shares allotted have been cancelled and what number is being held as treasury shares; and
- (d) where shares allotted are being held as treasury shares, a statement of:
  - (i) the total number of treasury shares of each class held by the company following the allotment and non-cancellation of such shares; and

- (ii) the number of shares of each class that the company has in issue less the total number of treasury shares of each class held by the company following the allotment and non-cancellation of such shares.

15.22 Any sale for cash, transfer for the purposes of or pursuant to an employees' share scheme or cancellation of treasury shares by the company must be notified to a Regulatory Information Service as soon as possible and in any event no later than 7.30am on the business day following the calendar day on which the sale, transfer or cancellation occurred. The notification must include:

- (a) the date of the sale, transfer or cancellation;
- (b) the number of the shares sold, transferred or cancelled;
- (c) the sale or transfer price for each of the highest and lowest prices paid, where relevant; and
- (d) a statement of:
  - (i) the total number of treasury shares of each class held by the company following the sale, transfer or cancellation of such shares; and
  - (ii) the number of shares of each class that the company has in issue less the total number of treasury shares of each class held by the company following the sale, transfer or cancellation of such shares.

**Limit on the discount to market price at which treasury shares can be sold for cash**

15.23 Subject to paragraphs 15.24 and 15.25, a company must not sell treasury shares for cash at a discount of more than 10% to the middle market price of those shares at the time of the sale otherwise than pursuant to an opportunity which is made available on the same terms to all holders of the company's shares (or to all holders of the relevant class of its shares).

15.24 A company may sell treasury shares for cash otherwise than as contemplated in paragraph 15.23 where the UK Listing Authority is satisfied that the issuer is in severe financial difficulties or that there are other exceptional circumstances. Further the limit on the discount to middle market price in paragraph 15.23 shall not apply to a sale of treasury shares for cash if the sale is either:

- (a) to a small number of persons who are specifically approved by shareholders in general meeting and who have been named in the circular for the general meeting; or
- (b) pursuant to a general disapplication of section 89 of the Companies Act 1985 approved by shareholders in general meeting.

15.25 The prohibition in paragraph 15.23 will not apply to transfers of treasury shares for cash by a company to an employee share scheme under which participation is offered on similar terms to all or substantially all employees of the issuer and its subsidiaries.



## Part II - Text of consequential amendments to the Listing Rules

...

### Definitions

...

Insert the following new definition in the appropriate alphabetical position.

treasury shares: are qualifying shares to which sections 162A to 162G of the Companies Act 1985 apply

...

3.13 For the purposes of paragraph 3.12, a controlling shareholder is any person (or persons acting jointly by agreement whether formal or otherwise) who is:

- (a) entitled to exercise, or to control the exercise of, 30% or more of the rights to vote at general meetings of the applicant (but the rights to vote attaching to any treasury shares held by a company are not to be taken into account when calculating a person's percentage of rights to vote under this paragraph); or
- (b) able to control the appointment of directors who are able to exercise a majority of votes at board meetings of the applicant.

...

...

3.16 Except where securities of the same class are already listed, the expected aggregate market value of all securities (excluding treasury shares) to be listed must be at least:

- (a) £700,000 for shares; and
- (b) £200,000 for debt securities (except there is no minimum limit in the case of tap issues where the amount of the debt securities is not fixed).

...

3.21A For the purposes of paragraphs 3.19 and 3.21, treasury shares are not taken into consideration when calculating the percentage of a class of shares in the hands of the public.

...

3.23 In the absence of exceptional circumstances the issue of warrants or options to subscribe for equity shares must be limited to not more than 20% of the issued equity share capital (calculated exclusive of treasury shares) of the applicant at the time of issue of the warrants or options. Rights under employees' share schemes will not be included for the purpose of this 20% limit.

...

- 4.38 If following an offer for sale, offer for subscription, placing or intermediaries offer by a new applicant any of the new applicant's advisers or any intermediary becomes interested in 3% or more of any class of equity shares being marketed (calculated exclusive of treasury shares), the interest must be notified to a Regulatory Information Service before admission of the securities is expected to become effective. For this purpose, an adviser or intermediary is interested in any equity shares held by market makers in the group of companies to which it belongs but is not interested in any securities held on behalf of bona fide clients by any company in the group of companies to which it belongs. In assessing the percentage size of the interest, the equity shares being marketed are to be treated as having already been issued.

...

- 5.31A No circular is required under paragraph 5.31 for issues of warrants or options in any 12 month period which on exercise would result in an increase of less than five per cent in the issued share capital (calculated exclusive of treasury shares) of the relevant class of underlying securities of the issuer. In such a case the issuer must notify a Regulatory Information Service of the issue of the warrants or options without delay, giving the information required by paragraph 5.31 (a), (b) and (c).

...

## APPENDIX 2 TO CHAPTER 5

...

### Admission of an AIM company (paragraph 5.23A(c))

3. The exempt listing document must contain:

...

- (f) a statement that application has been made for listing, the date on which the shares will be admitted to listing and on which dealings will commence and:
- (i) in the case of shares, the nominal or accounting par value of the shares, the number of each class of shares held as treasury shares and the information required by paragraphs 6.B.7 and 6.B.8 (summary of rights of shares);

...

...

- 6.C.9 The amount of the issuer's authorised and issued capital and the amount of any capital agreed to be issued, the number and classes of the shares of which it is composed with details of their principal characteristics and the number of each class of shares held as treasury shares; if any part of the issued capital is still to be paid up, a statement of the number, or total nominal value, and the type of the shares not yet fully paid up,

broken down, where applicable, according to the extent to which they have been paid up.

...

6.C.15 The names of the persons, so far as they are known to the issuer, who, directly or indirectly, jointly or severally, exercise or could exercise control over the issuer, and particulars of the proportion of the voting capital held by such persons. For these purposes;

(a) joint control means control exercised by two or more persons who have concluded an agreement which may lead to their adopting a common policy in respect of the issuer; and

(b) treasury shares are not to be taken into account when calculating the proportion of voting control held by any person in relation to whom disclosure is required under this paragraph.

6.C.16 In so far as is known to the issuer, the name of any person, other than a director and other than the issuer itself by virtue of it holding treasury shares, who, directly or indirectly, is interested in 3% or more of the issuer's capital (calculated exclusive of treasury shares), together with the amount of each such person's interest or, if there are no such persons, an appropriate negative statement.

...

6.J.9 The amount of the issuer's authorised and issued capital and the amount of any capital agreed to be issued, the number and classes of the securities of which it is composed with details of their principal characteristics and the number of each class of shares held as treasury shares; if any part of the issued capital is still to be paid up, a statement of the number, or total nominal value, and the type of securities not yet fully paid up, broken down, where applicable, according to the extent to which they have been paid up.

...

7.5 The following documents ("the 48 hour documents") must be lodged in final form with the UK Listing Authority (marked for the attention of Listing Applications) no later than midday at least two business days prior to the consideration of the application for admission to listing:

...

#### **Additional documents for new applicants**

(g) in the case of a new applicant:

...

- (iii) if requested by the UK Listing Authority, where any corporate shareholder (other than the applicant itself by virtue of it holding treasury shares) holds 5% or more of the issued equity shares (calculated exclusive of treasury shares), a declaration by a duly authorised officer of that corporate shareholder, giving details of its registered office, directors, shareholders and objects and such other details as the UK Listing Authority shall require;

## CHAPTER 9 CONTINUING OBLIGATIONS

### Scope of chapter

This chapter sets out certain of the continuing obligations which a listed company is required to observe once any of its securities have been admitted to listing. Additional continuing obligations are set out in the following chapters:

chapter 10	-	transactions
chapter 11	-	transactions with related parties
chapter 12	-	financial information
chapter 13	-	documents not requiring prior approval
chapter 14	-	circulars
chapter 15		<u>purchase of own securities and provisions relating to shares held in treasury</u>
chapter 16	-	directors.

...

- 9.18 (a) Unless shareholders otherwise permit, a company proposing to issue equity securities for cash or sell treasury shares that are equity securities for cash must first offer those securities to existing equity shareholders (other than the company itself by virtue of it holding treasury shares) and to holders of other equity securities of the company who are entitled to be offered them in proportion to their existing holdings (see also paragraphs 9.20 and 14.8). Only to the extent that the securities are not taken up by such persons under the offer may they then be issued for cash to others or otherwise than in the proportion mentioned above.

- (b) To the extent that a company is proposing to sell treasury shares that are equity securities for cash to an employee share scheme, a company need not comply with paragraph 9.18(a) above.

...

- 9.20 To the extent that shareholders of a company give their authorisation under section 95 of the Companies Act 1985 to the general disapplication of the statutory pre-emption rights set out in section 89(1) of that Act, issues by a company of equity securities for cash or sales by a company of treasury shares that are equity securities for cash made

otherwise than to existing shareholders in proportion to their existing holdings will be permitted in accordance with that authorisation.

...

9.43 Where power is taken in the articles to impose sanctions on a shareholder who is in default in complying with a notice served under section 212 of the Companies Act 1985:

...

(b) for a shareholding of less than 0.25% of the relevant class (calculated exclusive of treasury shares), the only sanction the articles may provide for is a prohibition against attending at meetings and voting; for a shareholding of 0.25% or more of the relevant class (calculated exclusive of treasury shares), the articles may also provide:

(i) for the withholding of the payment of dividends (including shares issued in lieu of dividend) on the shares concerned; and

(ii) for the placing of restrictions on the transfer of the shares, provided that restrictions on transfer do not apply to a sale to a bona fide unconnected third party (such as a sale through an RIE or an overseas exchange or by the acceptance of a takeover offer); and

...

10.5 The percentage ratios are the figures, expressed as a percentage, resulting from each of the following calculations:

...

(d) **Consideration to market capitalisation** - the consideration divided by the aggregate market value of all the ordinary shares (excluding treasury shares) of the listed company (see also paragraphs 10.14 and 10.17 (b) and (d)); and

...

...

10.16 The gross capital of the listed company means the aggregate of:

(a) the market value of its shares (excluding treasury shares) and debt securities;

...

...

10.17 Except as stated in paragraphs 10.18 and 10.19, figures used for classification purposes must be:

...

- (c) in the case of the shares and debt securities aggregated for the purposes of the gross capital percentage ratio, the aggregate market value of all those shares and debt securities, if available, before the announcement, or their nominal value; ~~and~~
- (d) in the case of market capitalisation for the purposes of the percentage ratio in paragraph 10.5(d), the aggregate market value of all the ordinary shares (excluding treasury shares) of the listed company at the close of business on the last day immediately preceding the announcement. In certain circumstances, the UK Listing Authority may agree to include the market value of other listed equity securities to determine the market capitalisation of the listed company; and
- (e) in the case of shares and debt securities aggregated for the purposes of the gross capital percentage ratio in paragraph 10.15(b), any treasury shares held by the company are not to be taken into account.

...

11.7 The rules contained in this chapter do not apply to a company where it (or any of its subsidiary undertakings) proposes to enter into a transaction with a related party if:

...

#### **Issue of new securities and sale of treasury shares**

- (c) the transaction is either:
  - (i) an issue of new securities either:
    - ~~(i)~~(a) for cash by the company (or any of its subsidiary undertakings) pursuant to an opportunity which (so far as is practicable) is made available to all holders of the company's securities (or to all holders of a relevant class of its securities) on the same terms; or
    - ~~(ii)~~(b) made pursuant to the exercise of conversion or subscription rights attaching to a listed class of securities or previously approved by the company's shareholders in general meeting; or
  - (ii) a sale of treasury shares for cash by the company pursuant to an opportunity which (so far as is practicable) is made available to all holders of the company's securities (or to all holders of a relevant class of its securities) on the same terms;

...

12.43 The following items must, unless the UK Listing Authority otherwise agrees, be included in the annual report and accounts:

...

**Purchase by company of its own shares and sales for cash of treasury shares**

- (n) in the case of a company incorporated in the United Kingdom (or for the purpose of treasury shares a company incorporated in Great Britain); ~~details of:~~
- (i) details of any shareholders' authority for the purchase by the company of its own shares still valid at the end of the period under review ~~and;~~
  - (ii) in the case of ~~such~~ purchases made otherwise than through the market or by tender or partial offer to all shareholders, particulars of the names of sellers of such shares purchased, or proposed to be purchased, by the company during the period under review; in the case of any ~~such~~ purchases, or options or contracts to make such purchases, entered into since the end of the period covered by the report, equivalent information to that required under part II of schedule 7 to the Companies Act 1985 (disclosure required by company acquiring its own shares, etc.) must be given; and
  - (iii) in the case of sales of treasury shares for cash made otherwise than through the market or otherwise than pursuant to an opportunity which (so far as was practicable) was made available to all holders of the company's securities (or to all holders of a relevant class of its securities) on the same terms, particulars of the names of purchasers of such shares sold, or proposed to be sold, by the company during the period under review;

...

13.13 The following schemes of a listed company incorporated in the United Kingdom (or for the purpose of treasury shares a company incorporated in Great Britain)-(and of any of its subsidiary undertakings even where that subsidiary undertaking is incorporated or operates overseas) must be approved by an ordinary resolution of the shareholders of the listed company in general meeting prior to their adoption:

- (a) an employees' share scheme if the scheme involves or may involve the issue of new shares or the transfer of treasury shares; and
- (b) subject to the provisions of paragraph 13.13A, a long-term incentive scheme in which one or more directors of the issuer is eligible to participate.

...

14.7 A circular in connection with a resolution proposing to grant the directors authority to allot relevant securities (as that term is defined in section 80 of the Companies Act 1985) must include:

(a) a statement of the maximum amount of relevant securities which the directors will have authority to allot and the percentage which that amount represents of the total ordinary share capital in issue (calculated exclusive of treasury shares) as at a date not more than one month prior to the date of the circular;

(aa) a statement of the number of treasury shares held by the company as at the date not more than one month prior to the date of the circular and the percentage which that amount represents of the total ordinary share capital in issue (calculated exclusive of treasury shares) as at the date not more than one month prior to the date of the circular;

.....

14.12 A circular containing an offer to shareholders of the right to elect to receive shares in lieu of all or part of a cash dividend must include:

(a) a statement of the total number of shares that would be issued if all eligible shareholders were to elect to receive shares in respect of their entire shareholdings, and the percentage which that number represents of the equity shares (excluding treasury shares) in issue at the date of the circular;

...

## **CHAPTER 15**

### **PURCHASE OF OWN SECURITIES AND PROVISIONS RELATING TO SHARES HELD IN TREASURY**

#### **Scope of chapter**

This chapter sets out the rules which apply to a company wishing to purchase its own listed securities, whether as a market purchase or an off-market purchase within the meaning of section 163 of the Companies Act 1985. It also sets out the rules which apply to a company that (following a purchase of its own securities) holds a proportion of its own shares as treasury shares and wishes to sell, transfer or cancel such shares. The requirements mainly relate to the notification of ~~proposed and actual~~ purchases by a company of its own securities and dealings in treasury shares. The information required in annual accounts concerning the purchase of own securities and dealings in treasury shares is set out in paragraph 12.43(n). Where a company is proposing to purchase its own securities by way of a tender offer, reference should also be made to the rules of any RIE on which securities are admitted to trading.

The main headings are:

- 15.1 general
- 15.3 purchase of own equity shares
- 15.13 purchase of own securities other than equity shares-



### 15.19 treasury shares

...

- 15.4 A circular seeking shareholders' authority for the purchase by a company of its own equity shares need not be submitted to the UK Listing Authority for approval unless it falls within paragraph 15.2 or 15.5, but must include the following information:

...

- (f) the total numbers of warrants and options to subscribe for equity shares that are outstanding at the latest practicable date prior to publication of the circular and both the proportion of issued share capital (excluding treasury shares) that they represent at that time and that they will represent if the full authority to buyback shares (existing and being sought) is used.

- 15.5 Where the exercise in full of the authority sought would result in the purchase of 15% or more of the company's issued equity shares (excluding treasury shares) the circular to shareholders required by paragraph 15.4 must also include:

- 6.C.1 name and address
- 6.C.16 major interests in shares
- 6.E.8 significant changes
- 6.E.16 working capital
- 6.F.4,5 directors' interests in shares
- 6.G.1(b) group prospects.

The working capital statement required under this paragraph must be based on the assumption that the authority sought will be used in full at the maximum price allowed and this assumption must be stated.

### **Purchases of less than 15%**

- 15.6 Unless a tender or partial offer is made to all holders of the class of securities on the same terms, purchases by a company of less than 15% of any class of its equity shares (excluding treasury shares) pursuant to a general authority granted by shareholders may be made through the market only if the price to be paid is not more than 5% above the average of the market values of those shares for the 5 business days before the purchase is made.

### **Purchases of 15% or more**

- 15.7 Purchases by a company of 15% or more of any class of its equity shares (excluding treasury shares) pursuant to a general authority granted by shareholders must be made by way of either a tender or a partial offer to all shareholders of that class on the same terms. Where a series of purchases is made pursuant to a general authority granted by shareholders, which in aggregate amounts to 15% or more of the number of shares of the relevant class which were in issue immediately following the shareholders meeting at which the general authority to purchase was granted, a tender or partial offer need only be made in respect of any purchase that takes the aggregate to or

above that level. Purchases that have been specifically approved by shareholders are not to be taken into account in determining whether the 15% level has been reached.

...

- 15.14 Where within a period of 12 months a company purchases warrants or options to subscribe or purchase its own equity shares which on exercise convey entitlement to shares representing 15% or more of the company's existing issued shares (excluding treasury shares), the company must send to its shareholders a circular containing the following information:

...

- 18.3 Acquisitions and disposals of property by a property company (including any transactions or arrangements the purpose of which is to change, in whole or in part, the beneficial ownership of a property) are subject to the rules contained in chapter 10 regarding the classification of transactions save as indicated below:

...

- (e) paragraph 10.5(d) does not apply, but when any of the consideration for an acquisition is in shares an alternative test will be applied comparing the shares to be issued with the number of shares in issue (excluding treasury shares);

...

- 19.1 The following definitions apply:

- (a) a "mineral company" is a company or group of which a principal activity is, or is planned to be, the extraction of mineral resources (which may or may not include exploration for mineral resources). In determining what constitutes a principal activity, the UK Listing Authority will have regard to all the circumstances, including whether the activity represents 25% or more of gross revenue, operating expenses, assets or market capitalisation of the company or group (for these purposes, treasury shares are not be taken into account when calculating a company's market capitalisation);

...

- 19.3 A new applicant, which is a mineral company, must:

...

### **Value of reserves**

- (d) demonstrate that, immediately prior to its application for admission to listing, the aggregate value (see paragraph 19.15(1)) of its proven and probable reserves as estimated in the competent person's report, required by paragraph 19.4(a), is not less than 50% of the expected aggregate market value of its equity share capital

(calculated exclusive of treasury shares) immediately following admission to listing;

...

21.20 An investment company (other than an investment trust) must continue to comply with paragraph 21.9(g) and (h). An investment company (including an investment trust) must continue to comply with paragraph 21.9(d) and must comply with the applicable continuing obligations set out in the listing rules, modified by paragraphs 21.22 to 21.25 and, in the case of overseas companies, by chapter 17, save that:

...

(c) for open-ended investment companies, paragraphs 9.11, 9.12 and 9.14 (notification of major interests in shares) do not apply (but interests of any one person or entity which exceed 10% of the issued shares (calculated exclusive of treasury shares) of any class in the capital of the company must, so far as they are known to the company, be notified to a Regulatory Information Service without delay following the company becoming aware of those interests);

...

(g) chapter 15 (purchase of own securities and provisions relating to shares held in treasury) does not apply to open-ended investment companies;

...

(j) for an investment company (including an investment trust), dealings by directors, and purchases by the company of its own securities and, in respect of treasury shares, sales for cash and transfers (except for sales or transfers by a company of treasury shares in the circumstances set out in paragraph 15.19(b)) during a close period which would otherwise be prohibited under the provisions of the Model Code, may be permitted if the UK Listing Authority is satisfied that all price sensitive information which the directors and the company may have in periods leading up to an announcement of results has previously been notified to a Regulatory Information Service. The UK Listing Authority must be consulted at an early stage.

...

21.21 Unless authorised by the shareholders, a closed-ended investment company may not issue further shares of the same class as existing shares for cash at a price below the net asset value per share of those shares unless they are first offered pro rata to existing holders of shares of that class. When calculating the net asset value per share under this paragraph any treasury shares held by the company are not to be taken into account.

...

27.5 In the application of chapter 3 to a strategic investment company, the requirements of paragraphs 3.3(a) (audited accounts for three years) and 3.6 (nature and duration of business activities) are modified as follows:

...

- (e) the company must have a market capitalisation on admission of at least £100m (based on the issue price and shares, other than treasury shares, in issue on admission); and

...

...

**SCHEDULE 1A**

**SPONSOR'S CONFIRMATION OF INDEPENDENCE**

To: UK Listing Authority .....20....

Full name of sponsor: .....("the sponsor")

Full name of issuer: ..... ("the issuer")

I,....., a partner/director of the above sponsor, or an officer duly authorised to give this declaration:

(a) hereby notify you that a director, partner or employee of the sponsor who is directly involved in the sponsor activities of the sponsor in relation to the issuer has an interest in a class of share, debt or loan capital of the issuer or any other company in the issuer's group;

Issuer or group company	Nature of holding	Holding	%*	Name of beneficial owner
-------------------------	-------------------	---------	----	--------------------------

or

(b) hereby confirm that no director, partner or employee of the sponsor who is directly involved in the sponsor activities of the sponsor in relation to the issuer has any interest in any class of share, debt or loan capital of the issuer or any other company in the issuer's group;

and either

(c) hereby notify you of the following interests of the sponsor (and any company in the sponsor's group) (being all such interests of which the sponsor or the compliance department is aware) in the shares, debt or loan capital of the issuer or any other company in the issuer's group.

Issuer or group company	Nature of holding	Holding	%*	Name of beneficial owner
-------------------------	-------------------	---------	----	--------------------------

(Holdings by exempt fund managers and exempt market makers' holdings may be excluded. Holdings of the type exempted from disclosure under Section 209 of the Companies Act 1985 may be excluded. "Group company" includes any company whose results are consolidated into the ultimate holding company's statutory accounts).

or

- (d) hereby confirm that the above sponsor (or any company in the sponsor's group) has no interest (of which the sponsor or the compliance department is aware) in any class of share, debt or loan capital of the issuer or any other company in the issuer's group;

and either

- (e) hereby notify you that the individual(s) named below, who is (are) a director, partner or employee of the sponsor (or any company in the sponsor's group) is either a director of the issuer, or a director of a company in the issuer's group;

Name	Employer	Company of which individual is a director
------	----------	---

and confirm that the individual(s) will take no part in the sponsor's activities in relation to this transaction;

or

- (f) hereby confirm that no director, partner or employee of the sponsor (or any company in the sponsor's group) has a directorship in the issuer, or any company in the issuer's group;

and either

(g) hereby notify you of any other matter referred to in the sponsors' eligibility criteria that we or our compliance department are aware of which may affect our independence from the issuer or any other company in the issuer's group;

or

(h) hereby confirm that there are no other matters referred to in the sponsors' eligibility criteria that we or our compliance department are aware of which may affect our independence from the issuer or any other company in the issuer's group.

SIGNED BY .....

Partner/director or duly authorised officer,

for and on behalf of

.....

Name of sponsor

### **Confirmation of independence by the Compliance Department**

I,..... being a duly authorised compliance officer of the above sponsor, hereby confirm that I am satisfied that:

- the information provided on this confirmation of independence is accurate and complete; and
- where interests or directorships or other matters have been notified to you in (a), (c), (e) or (g) above, appropriate procedures are in place to avoid a conflict of interest between the sponsor's duties under the listing rules and those interests or directorships.

SIGNED BY .....

Compliance Officer

for and on behalf of

.....

Name of sponsor

~~Notes deleted—December 2001~~ \*Treasury shares are not to be included in the number of shares of the relevant class when calculating percentage holding.



## SCHEDULE 10

### NOTIFICATION OF MAJOR INTERESTS IN SHARES

AVS  
NO

All relevant boxes should be completed in block capital letters.

<b>1.</b> Name of company		<b>2.</b> Name of shareholder having a major interest	
<b>3.</b> Please state whether notification indicates that it is in respect of holding of the shareholder named in 2 above or in respect of a non-beneficial interest or in the case of an individual holder if it is a holding of that person's spouse or children under the age of 18		<b>4.</b> Name of the registered holder(s) and, if more than one holder, the number of shares held by each of them	
<b>5.</b> Number of shares/amount of stock acquired	<b>6.</b> Percentage of issued class ( <u>any treasury shares held by company should not be taken into account when calculating percentage</u> )	<b>7.</b> Number of shares/amount of stock disposed	<b>8.</b> Percentage of issued class ( <u>any treasury shares held by company should not be taken into account when calculating percentage</u> )
<b>9.</b> Class of security		<b>10.</b> Date of transaction	<b>11.</b> Date company informed

12. Total holding following this notification	13. Total percentage holding of issued class following this notification ( <u>any treasury shares held by company should not be taken into account when calculating percentage</u> )
14. Any additional information	15. Name of contact and telephone number for queries
16. Name and signature of authorised company official responsible for making this notification  Date of notification _____ 20 _____	

**SCHEDULE 11**

**NOTIFICATION OF INTERESTS OF DIRECTORS AND CONNECTED PERSONS**

AVS   
NO

All relevant boxes should be completed in block capital letters.

1. Name of company	2. Name of director
3. Please state whether notification indicates that it is in respect of holding of the shareholder named in 2 above or in respect of a non-beneficial interest or in the case of an individual holder if it is a holding of that person's spouse or children under the age of 18 or in respect of a non-beneficial interest	4. Name of the registered holder(s) and, if more than one holder, the number of shares held by each of them (if notified)
5. Please state whether notification relates to a person(s) connected with the director named in 2 above and identify the connected person(s)	6. Please state the nature of the transaction. For PEP transactions please indicate whether general/single co PEP and if discretionary/non discretionary /non discretionary

7. Number of shares/amount of stock acquired	8. Percentage of issued class( <u>any treasury shares held by company should not be taken into account when calculating percentage</u> )	9. Number of shares/amount of stock disposed	10. Percentage of issued class ( <u>any treasury shares held by company should not be taken into account when calculating percentage</u> )
11. Class of security	12. Price per share	13. Date of transaction	14. Date company informed
15. Total holding following this notification		16. Total percentage holding of issued class following this notification ( <u>any treasury shares held by company should not be taken into account when calculating percentage</u> )	

**If a director has been granted options by the company please complete the following boxes.**

17. Date of grant	18. Period during which or date on which exercisable
19. Total amount paid (if any) for grant of the option	20. Description of shares or debentures involved: class, number
21. Exercise price (if fixed at time of grant) or indication that price is to be fixed at time of exercise	22. Total number of shares or debentures over which options held following this notification
23. Any additional information	24. Name of contact and telephone number for queries
25. Name and signature of authorised company official responsible for making this notification Date of notification _____ 20 _____	

## Annex B

### Changes to UKLA Guidance Manual

In this Annex underlining indicates new text and striking through indicates deleted text.

#### THE CONTINUING OBLIGATIONS GUIDE

##### The UKLA's guide to the continuing obligations regime

...

#### 1. INTRODUCTION

...

##### Sources of the continuing obligations

1.2 The requirements relating to the continuing obligations can be found, principally, in the following chapters of the listing rules:

- Chapter 9 – general provisions of continuing obligations
- Chapter 10 – transactions
- Chapter 11 – transactions with related parties
- Chapter 12 – financial information
- Chapters 13 and 14 – documents not requiring prior approval and circulars
- Chapter 15 – purchase of own securities and provisions relating to shares held in treasury
- Chapter 25 – innovative high growth companies

#### 4 Notification: share dealings and shareholders

...

##### Company purchases of own shares and provisions relating to shares held in treasury

4.24 Purchases by a listed company, or on its behalf, of its own equity shares or of any other of its securities, which are listed, must be announced. Similarly allotments of shares to a listed company (by virtue of it holding treasury shares) as part of a capitalisation or bonus issue and all sales, transfers out of treasury and cancellations of treasury shares must be announced.

4.25 **Listed companies** must:

...

- b) notify an RIS of:

...

- (iii) any purchase by or on behalf of the company of its own equity shares **as soon as possible** and no later than 7.30 am on the next business day; ~~and~~
- (iv) any purchases, early redemption or cancellation of its own non-equity shares when an aggregate 10% of the initial amount of the securities (and each aggregate 5% thereafter) is purchased, redeemed or cancelled **by 7.30 am on the following day**;
- (v) any allotment of shares to the company, by virtue of it holding treasury shares, as part of a capitalisation or bonus issue by the company **as soon as possible** and no later than 7.30 am on the next business day; and
- (vi) any sale, transfer out of treasury or cancellation of treasury shares **as soon as possible** and no later than 7.30 am on the next business day.

4.26 **Content of notification:** details which need to be contained in the notifications include:

...

- b) for purchases of equity securities:
  - (i) the date of purchase;
  - (ii) the number of shares purchased;
  - (iii) the price paid, or the highest and lowest prices paid;
  - (iv) a statement as to what number of the equity shares were purchased for cancellation and what number were purchased in order to be held as treasury shares;
  - (v) where equity shares were purchased to be held as treasury shares, a statement of:
    - (a) the total number of treasury shares of each class held by the company following the purchase and non-cancellation of such equity shares;
    - (b) the number of shares of each class that the company has in issue less the total number of treasury shares of each class held by the company following the purchase and non-cancellation of such equity shares;
- c) for purchases, early redemptions or cancellations of non-equity securities:

...

- (iii) whether or not the securities acquired are to be cancelled;
- (iv) for purchases or early redemptions of securities that are shares but not equity shares only:
  - (a) a statement as to what number of the shares were purchased or redeemed early for cancellation and what number were purchased or redeemed early in order to be held as treasury shares;
  - (b) where shares were purchased or redeemed early to be held as treasury shares, a statement of:
    - (i) the total number of treasury shares of each class held by the company following the purchase or early redemption and non-cancellation of such shares;
    - (ii) the number of shares of each class that the company has in issue less the total number of treasury shares of each class held by the company following the purchase or early redemption and non-cancellation of such shares;
- d) for allotments of shares to the company (by virtue of it holding treasury shares) as part of a capitalisation or bonus issue:
  - (i) the date of the allotment;
  - (ii) the number of shares allotted;
  - (iii) a statement as to what number of the shares allotted have been cancelled and what number is being held as treasury shares;
  - (iv) where shares allotted are being held as treasury shares, a statement of:
    - (a) the total number of treasury shares of each class held by the company following the allotment and non-cancellation of such shares;
    - (b) the number of shares of each class that the company has in issue less the total number of treasury shares of each class held by the company following the allotment and non-cancellation of such shares;
- e) for sales, transfers out of treasury and cancellations of treasury shares:
  - (i) the date of the sale, transfer out or cancellation;
  - (ii) the number of shares sold, transferred out or cancelled;

(iii) the sale or transfer price for each of the highest and lowest prices paid, where relevant;

(iv) a statement of:

(a) the total number of treasury shares of each class held by the company following the sale, transfer or cancellation of such shares; and

(b) the number of shares of each class that the company has in issue less the total number of treasury shares of each class held by the company following the sale, transfer or cancellation of such shares.

...

4.29 **Close and prohibited periods:** purchases ~~by a company~~ of its own securities and sales and transfers out of treasury of treasury shares by a company may generally not be made during those periods when its directors are prohibited from dealing under the Model Code.

...

4.32 **Related party transactions:** transactions with related parties are discussed further in Part 7 of this Guide.

...

7.4 The percentage ratios are the figures, expressed as a percentage, resulting from each of the following calculations:

d) Consideration to market capitalisation – the consideration divided by the aggregate market value of all the ordinary shares (excluding treasury shares) of the listed company.

...

## Appendix 5

### PIP SERVICE CRITERIA

#### Procedures in relation to applications for the approval of services provided by a Primary Information Provider (“PIP”)

...

Appendix to PIP service criteria – Headline categories for use with regulatory announcements

...	
<b>HIGH PRIORITY</b>	
Headline category	Description
<b>1<sup>st</sup> Quarter Results</b>	<b>First quarter financial results</b>
...	
<del><b>Purchase of Own Securities</b></del>	<del><b>Notification of a share buy back</b></del>
<b><u>Transaction in Own Shares</u></b>	<b><u>Notification of a transaction involving own shares, including a purchase, sale, redemption, cancellation, transfer or allotment</u></b>
<b>Re Agreement</b>	<b>Statement regarding an agreement between entities</b>
...	



## **LISTING RULES (INVESTMENT ENTITIES) (AMENDMENT) INSTRUMENT 2003**

### **Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 74 (The official list); and
  - (2) section 96 (Obligations of issuers of listed securities).

### **Commencement**

- B. This instrument comes into force on 1 November 2003.

### **Amendments to the Listing Rules**

- C. The Listing Rules are amended in accordance with the Annex to this instrument.

### **Citation**

- D. This instrument may be cited as the Listing Rules (Investment Entities) (Amendment) Instrument 2003.

By Order of the Board  
15 October 2003

## Annex

### Amendments to Listing Rules

In this Annex, underlining indicates new text and striking through indicates deleted text.

...

Investment companies and investment trusts

Conditions for listing - investment companies other than investment trusts

21.20 An investment company (other than an investment trust) must continue to comply with paragraph 21.9(g) and (h). An investment company (including an investment trust) must continue to comply with paragraph 21.9(d), (e), and (ee) ~~and (f)~~ and must comply with the applicable continuing obligations set out in the listing rules, modified by paragraphs 21.22 to 21.25 and, in the case of overseas companies, by chapter 17, save that:

- (k) any material change to the investment policies of an investment company (including an investment trust) may only be made with shareholders' approval; ~~and~~
- (l) an investment company (including an investment trust) must notify to a Regulatory Information Service:
  - (i) within two business days of the end of each calendar month, a list of all investments in other listed investment companies (including listed investment trusts), as at the last business day of that month, which themselves do not have stated investment policies to invest no more than 15% of their gross assets in other listed investment companies (including listed investment trusts); and
  - (ii) within two business days of the end of each quarter, a list of all investments with a value greater than 5% of the companies gross assets and at least the 10 largest investments as at the last business day of that quarter; and
- (m) an investment company may not invest more than 10%, in aggregate, of the value of the gross assets at the time the investment is made in other listed investment companies (including listed investment trusts) except that this restriction shall not apply to investments in investment companies or trusts which themselves have stated investment policies to invest no more than 15% of their gross assets in other listed investment companies (including listed investment trusts).

**SUBMISSION OF POLICY STATEMENTS  
(BANKS) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making powers);
  - (2) section 156 (General supplementary powers); and
  - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 December 2003.

**Amendments to the Interim Prudential sourcebook for banks**

- D. IPRU(BANK) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Submission of Policy Statements (Banks) Instrument 2003.

By Order of the Board  
20 November 2003

## Annex

### Amendments to IPRU(BANK)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Volume 1

GN: Section 3

...

3.4.12R A *bank* must send to the *FSA*:

(a) a copy of the policy statement it has first adopted in compliance with each of *IPRU (BANK)* 3.4.1R, 3.4.3R, 3.4.5R and 3.4.7R as soon as possible after adopting it; and

(b) ~~a copy of the current version of the policy statement annually, at the start of each calendar year. If, during that year, if~~ the policy statement is significantly amended subject to significant changes, a *bank* must send a copy of the amended policy statement to the *FSA* as soon as possible after adopting it. A significant change would include, for instance, new types of customers or business requiring different funding or provisioning. If there is any doubt about whether a change is significant or not, it must be treated as significant.

3.4.13G ~~Where a policy statement that a bank is required to have under each of *IPRU (BANK)* 3.4.1R, 3.4.3R, 3.4.5R and 3.4.7R remains unchanged, it should still send a copy of the policy statement annually to the *FSA*. [Deleted]~~

...

CB: Section 2

...

2 Under rule 3.4.712 in Chapter GN, a *UK bank* must provide the *FSA* with a statement of its policy on its trading book. It should agree the statement with the *FSA*. This statement must be reviewed and, where necessary, updated annually, with any major/significant changes approved by its board or a body delegated this responsibility by the board. The bank should obtain the *FSA*'s written agreement to the any significant changes made. ~~A bank must inform the *FSA* when a review has taken place.~~

- a) This applies to all *UK banks* since the *FSA*'s agreement to a trading book policy statement forms the basis for determining whether it is appropriate for a *bank* not to apply the CAD trading book treatment.
  - i) The policy statement of a *bank* whose trading activities are judged minimal need only cover certain of the items normally required.

...

8 ~~The FSA reviews annually each bank's trading book policy statement.~~[This is intentionally blank.]

9 ~~The FSA reviews at least annually the trading activities of a non-CAD bank to ensure that they remain minimal.~~[This is intentionally blank.]

...

CB: Section 5

...

3 The policy statement must be reviewed and where necessary updated annually, with ~~major~~significant changes approved by its board or the body delegated this responsibility by the board. A *bank* should seek the *FSA*'s written agreement to it making ~~such any~~significant changes. ~~Where approval of changes is delegated, that body should inform the board of any major changes.~~ A bank must inform the *FSA* when a review has taken place (see 3.4.9E).

...

Volume 2

LE: Section 3

...

12 ~~The FSA reviews annually each bank's large exposures policy statement and its lending limits for exempt exposures.~~[Deleted]

...

LE: Section 8

...

- 2           The rules require a *bank* to have its policy statement approved by its board and to review it at least annually ~~and inform the FSA that it has done so~~. Significant ~~departures from~~ changes to policies, e.g. ~~new types of lending or breaches of existing limits~~, should not be incorporated in a policy statement without prior discussion with the *FSA*.

...

**TIER ONE CAPITAL FOR BANKS INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

**Commencement**

- B. This instrument comes into force on 1 January 2004.

**Amendments to the Interim Prudential sourcebook for banks**

- C. IPRU(BANK) is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Tier One Capital for Banks Instrument 2003.

By Order of the Board  
20 November 2003

## ANNEX

### Amendments to IPRU(BANK)

In this Annex, underlining indicates new text and striking through indicates deleted text. Where the numbering of a section has changed but the text is otherwise unamended, this is indicated but the text is not reproduced.

#### Volume 1

...

CA: Section 2

## 2 THE NATURE OF CAPITAL

### 2.1 The role of capital

1 From a **supervisory** perspective capital provides a buffer that enables a bank to absorb losses without the interests of the depositors being adversely affected.

2 For a **bank** the different forms of capital offer a flexible source of funding, since most elements include either a statutory or a contractual right to cancel or defer dividend (or interest) payments on share (or loan) capital. In difficult times, therefore, capital can be a comparatively cheap funding source; though to compensate for this, shareholders will expect a higher dividend when a bank is doing well.

### 2.2 The nature of capital

3 In order to perform this role, capital should have the following characteristics:

(a) It should be able to **absorb losses** before, or instead of, general creditors. ~~This can be done in two ways: Where the bank has ceased to be a going concern, the holders of capital are the last to be paid out in a liquidation.~~

(i) ~~The bank can have negative reserves, as long as these do not exceed the book value of the shares issued, while the bank continues to trade and remains solvent.~~

(ii) ~~Where the bank has ceased to be a going concern, the holders of the capital instruments are the last to be paid out in a liquidation.~~

See s5.1



- (b) ~~The core elements of capital (tier 1)-Good quality capital~~ should have **no fixed costs**, i.e. there should be no contractual obligation to pay dividends on equity, and there ~~may~~ should be a contractual right to defer interest payments ~~on subordinated loan capital.~~

...

## 2.3 Types of capital

4 For supervisory purposes capital is split into three categories: Tier 1 (core and innovative), Tier 2 (upper and lower) and Tier 3. These categories represent different instruments' quality as capital, i.e. the degree to which each type of capital fulfils the characteristics stated above.

See s5

5 ~~Tier 1 capital forms~~ is a bank's core highest quality capital. It takes two forms — issued capital and internally generated capital. It is divided into Core Tier 1 and Innovative Tier 1 capital. Instruments that meet all of the characteristics set out in paragraph 1 of Section 4.2 will normally be classified as Core Tier 1. Features that weaken these characteristics in any way would usually lead to classification as Innovative Tier 1 (or Tier 2).

- (a) Examples of features that may lead to classification as Innovative, rather than Core Tier 1 include: indirect issuance, step-ups (increases in the coupon paid) and stock settlement of principal.

6 Tier 1 may be issued or internally generated capital.

- (a) Issued capital includes ordinary share capital and preference share capital. (e.g. share capital) is perpetual and returns are non-cumulative, as well as ~~having the characteristics detailed above.~~

a) ~~The perpetual (i.e. undated) nature of Tier 1 capital ensures that it can provide an on-going source of funding to the bank until the point where the bank becomes insolvent, or ceases trading.~~

b) ~~Non-cumulative means that should the bank decide not to make a dividend payment, the dividend is not deferred, but cancelled. This ensures that the capital has no fixed costs.~~

- (b) Internally generated capital ~~arises~~ is arising from accruing profit to reserves, or by capitalising dividends.

In the remainder of Section 2 of Chapter CA, the numbering of each paragraph numbered with an Arabic numeral is increased by one, so that the existing paragraph 6 becomes 7 and so on. Subject to that, the remainder of that section is unchanged.

...

## 4 ELEMENTS OF A BANK'S CAPITAL BASE

...

### 4.2 Tier 1 –~~core~~ capital

#### 1 Principles underlying Tier 1 capital

Tier 1 capital should be able to absorb losses to allow a bank to continue trading, despite suffering losses up to the value of that capital and the capital should be permanently available for that purpose. In order to meet these principles Tier 1 capital should have the following characteristics:

##### (a) it should be subordinated

- a) Subordination should be effective not only so that the holders of the capital are repaid after ordinary creditors on a winding up, but also so that there are no obligations that could result in the bank ceasing to trade normally and no obligations the breach of which could have that effect or provide grounds for the taking of winding up, administration or other insolvency proceedings against the bank.

##### (b) it should be perpetual (e.g., it should be undated); and

- a) The *perpetual* (i.e. undated) nature of Tier 1 capital ensures that it can provide an on-going source of funding to the bank until the point where the bank becomes insolvent, or ceases trading.

##### (c) it should be non-cumulative (e.g., there should be no obligation to make coupon payments.

- a) *Non-cumulative* means that should the bank decide not to make a dividend payment, the dividend is not deferred, but cancelled. This ensures that the capital has no fixed costs.

See s5

12

Core Tier 1 (~~or core~~) capital consists of:

See s5.1

##### (a) Permanent share capital:

- (i) Allotted, called up and fully paid ordinary share capital/~~common stock~~.

See s10.1

- a) This should be net of any own shares held.

b) “Fully paid” means that the proceeds of the issue have been received by the bank and are available to absorb losses. This is stricter than the Companies Act definition of fully paid, which only requires an undertaking to pay.

(ii) Perpetual non-cumulative ~~preferred (or preference)~~ shares including such shares redeemable at the option of the issuer but with the FSA’s prior consent, and such shares convertible into ordinary shares.

(b) ...

(c) ...

See s5.4

(d) Minority interests arising from consolidation in permanent shareholders’ equity subject to sections 5.4(10) and (11).

a) This applies, where there are minority interests, in the calculation of the solo-consolidated and consolidated capital base only.

3 Innovative Tier 1 capital consists of instruments which incorporate certain features, the effect of which is to weaken (but only marginally) the principles of Tier 1 capital. Innovative Tier 1 capital is subject to a limit of 15% of total Tier 1 capital after Tier 1 deductions.

See s10.1

24

In calculating a bank’s capital base, a number of deductions should be made from Tier 1:

(a) All holdings of own shares.

(b) Goodwill and other intangible assets.

(c) Current year’s unpublished net losses on the banking and trading books when taken together.

a) For non-CAD banks the deduction is current year’s unpublished net losses.

(d) Fully paid shareholders’ equity issued after 1 January 1992 by the capitalisation of property revaluation reserves.

In the remainder of Section 4 of Chapter CA, the numbering of each paragraph numbered with an Arabic numeral is increased by two, so that the existing paragraph [3] becomes [5] and so on. Subject to that, the remainder of that section is unchanged.

...

## 5 TIER 1 CAPITAL

This section provides detail on the constituent elements of Tier 1 capital other than accumulated profit and loss reserves.

### 5.1 Core and Innovative Tier 1 Permanent share capital

1 There are ~~two~~ three types of ~~share~~ capital instruments eligible for Tier 1 capital: ordinary shares, preference shares, and other capital instruments. The only capital instruments that may be eligible for Core Tier 1 are those described in paragraphs (a) and (b) below. Other capital instruments may be eligible as Innovative Tier 1.

(a) Ordinary shares, i.e. allotted, called up and fully paid share capital/~~common stock.~~

See s10.1

a) This should be net of any of its own shares that a bank holds.

b) “Fully paid” means that the proceeds of the issue have been received by the bank and are available to absorb losses. . This is stricter than the Companies Act definition of fully paid, which only requires an undertaking to pay.

(b) Perpetual non-cumulative ~~preferred~~ preference shares, including such shares redeemable at the option of the issuer and with the FSA’s prior consent; and such shares convertible into ordinary shares.

2 Ordinary Sshare capital is the strongest form of capital in terms of insulating depositors from credit risk. This is because:

(a) There is statutory subordination through the Companies Act and the Insolvency Act. Shareholders are the last to be paid in the event of the liquidation of a bank.

(b) Dividends are discretionary and non-cumulative - they ~~need~~ can only be paid when the bank has sufficient distributable reserves.

(c) Ordinary Sshare capital absorbs losses while the bank is still trading as a bank can have negative reserves, as long as these do not exceed the book value of the shares issued.

(d) It is undated.

3 Tier 1 capital should be predominantly in the form of ordinary shares and retained earnings.

(a) Predominantly will normally be interpreted as 50% or more of total Tier 1 capital after Tier 1 deductions.

**Preference (or preferred) shares and Innovative Tier 1 instruments** are shares where the holders subordinated to ordinary creditors and rank before ordinary shareholders in claims on a bank in a liquidation, but where typically the shares carry no (or limited) voting rights. Preference shares may take several forms, being either perpetual or dated, and cumulative or non-cumulative.

5.1 (4) only applies to directly issued Tier 1. Indirect issued Tier 1 is dealt with in 5.4.

In order to be eligible for inclusion in Tier 1 capital, preference the shares and instruments should have the following characteristics:

- (a) the bank should be able to eliminate the interest or dividend on the shares;
  - a) Where a tier 1 instrument includes a step-up in interest or dividends, it is regarded as 'innovative' provided no step-up occurs before the tenth anniversary of the date of issue. If the step-up occurs before the tenth anniversary of the date of issue, then the instrument is not eligible for Tier 1 capital. A one-off step-up in dividend from the tenth anniversary of issue associated with a call is permissible as long as the whole dividend can be waived. The dividend step-up should be no greater than either (i) 100bp, less the swap spread between the initial index basis and the stepped up index basis or (ii) 50% of the initial credit spread, less the swap spread between the initial index basis and the stepped up index basis. A bank wishing to include such an option should consult its line supervisor ahead of issue.
  - ~~b) Where a tier 1 instrument includes a step up in interest or dividends, it is regarded as 'innovative' under Basel guidelines. Following Basel, the FSA therefore applies a limit of 15% of total tier 1 capital to any tier 1 issues that incorporate a step up and/or are indirectly issued. There may be other instances where a tier 1 structure involves some innovative feature where the FSA will discuss with the issuer whether the 15% limit is also relevant.~~
- (b) the interest or dividend should be non-cumulative, i.e. if the interest payment or dividend is missed it cannot be rolled up;
  - a) It is acceptable to pay the interest or dividend in *scrip* if a cash dividend is withheld, as this is merely the conversion of one type of capital into another and provided this does not result in issuing lower quality capital. However, to qualify for Tier 1 an obligation to pay in cash the missed cash dividend should not accumulate.
  - i) Scrip dividends are dividends that convert reserves into shares via a balance-sheet change. Shareholders are often given the option to receive a scrip as opposed to a cash dividend. The benefit of scrip dividends is that they preserve the capital base of the bank, through the conversion of one type of capital into another, as opposed to paying out the dividend.

- b) Where coupon stock settlement features are included in Tier 1 capital, banks should ensure that they have an appropriate buffer of authorised capital to fulfil their potential obligations under such issues.
- (c) the shares and instruments should not be redeemable at the option of the holder;
- a) Call options subject to supervisory consent are permissible; these should be at the option of the issuer and are subject to a five-year minimum for the first call. Thereafter, the issuer may have more frequent calls for market access purposes.
- b) Where the call is accompanied by any feature, the effect of which is to increase investor expectations that the call will be exercised, the instrument would normally be classified as Innovative Tier 1 capital.
- i) An example is where there is an issuer call accompanied by a principal stock settlement feature allowing holders to elect to redeem Tier 1 instruments in exchange for ordinary shares in the event the call is not exercised.
- (d) the shares and instruments have no other provisions which require future redemption of the issue; ~~and~~
- (e) the shares and instruments ~~are~~ should be perpetual, i.e. they have no maturity date-;
- (f) the marketing of Tier 1 instruments should be in line with their prudential treatment. Therefore if an instrument that would otherwise qualify as Core Tier 1 is marketed as if it were an instrument that would only qualify for a lower level of capital (e.g. if marketed as dated) or on the basis that investing in it is like investing in a lower level instrument, it should be treated as an instrument falling into that lower level of capital for prudential purposes as well;
- (g) in deciding whether an instrument is eligible as Tier 1 capital or Core Tier 1 capital, its economic substance should also be taken into account. Therefore, any feature of an instrument that results in the economic substance of the instrument being inconsistent with the features of Tier 1 capital or Core Tier 1 capital will result in its being ineligible as Tier 1 capital or, as the case may be, Core Tier 1 capital. Any feature of a Tier 1 instrument that creates or increases market expectations of or pressure for redemption makes the instrument innovative;
- (h) the shares and instruments should be available to absorb losses on a going concern basis;

(i) to count as Core Tier 1, there should be no doubt that the instrument is available to absorb losses to allow an issuer to continue trading, despite suffering losses up to the value of that capital. The FSA considers that only directly issued ordinary shares, and directly issued non-cumulative undated preference shares meet these criteria. Any other instrument, if it is eligible Tier 1 capital, should be classified as Innovative.

An instrument may only be included in Innovative Tier 1 capital if it meets the criteria on loss absorbency in paragraph (ii);

(ii) the bank's obligations under the capital instrument should either not constitute a liability (actual, contingent or prospective) under section 123(2) of the Insolvency Act 1986 or, if they do, the conditions in paragraph (iii) should be met;

(iii) if the bank's obligations do constitute liabilities under paragraph (ii), the terms of the capital instrument should be such that:

- those liabilities should not be relevant for the purposes of deciding whether the bank is unable to pay its debts, whether it is likely to become unable to pay its debts or whether its liabilities exceed its assets;

- no creditor (including but not limited to holders of the instrument) should be able to petition for the winding up or administration of the bank on the grounds that the bank is or may become unable to pay any liabilities under the capital instrument;

- the bank should not have to take into account those liabilities for the purposes of deciding whether or not the bank is or may become insolvent for the purposes of section 214 of the Insolvency Act 1986 (wrongful trading);

(iv) therefore, if the capital instrument does constitute a liability, this should only be the case when the bank is perfectly able to pay that liability but chooses not to do so. As Tier 1 capital should be undated, this will generally only be relevant on a solvent winding up of the bank;

a) A bank wishing to issue a capital instrument should obtain an opinion from Queen's Counsel, or where the opinion relates to the law of a jurisdiction

outside the UK, from a lawyer in that jurisdiction of equivalent status, confirming that these criteria are met.

b) For the purpose of (iii) above, the holder should agree that the bank has no liability (including any contingent or prospective liability) to pay any amount to the extent to which that liability would cause the bank to become insolvent if it made the payment or to the extent that its liabilities exceed its assets or would do if the payment were made. The terms of the instrument should be such that the directors can continue to trade in the best interests of the senior creditors even if this prejudices the interests of the holders of the instrument.

(i) where an issuer call is accompanied by principal stock settlement, the instrument is classified as Innovative Tier 1:

(i) limited principal stock settlement will be allowed in Innovative Tier 1 subject to a redemption limit of an increase of 200% in the redemption ratio (alternative Tier 1 instrument to preference shares) set at the time of issue. The redemption value of the alternative Tier 1 instrument should not exceed the issue price of the original preference share or capital instrument;

(ii) where principal stock settlement features are included in Innovative Tier 1 capital, banks should ensure that they hold an appropriate buffer of authorised share capital to fulfil their potential obligations under such issues.

a) The redemption ratio is calculated as follows. The issue price of the original preference shares or capital instruments is compared with the market price (as at the date of issue of the preference share or capital instrument) of the Tier 1 instruments that will be issued on their redemption. The ratio between those two prices is calculated. Then the original issue price of the original preference shares or capital instruments is compared with the market price (as at the date of the redemption) of the Tier 1 instruments issued on their redemption. The ratio between those two prices is calculated. Those two ratios are then compared.

b) If the alternative Tier 1 instrument is not outstanding at the time of issue of the preference share or capital instrument, the redemption value of the alternative Tier 1 instrument should not be greater than the issue price of the original preference share or capital instrument being redeemed.

i) Assuming the following prices at the time of issue, and the maximum allowable increase in the redemption ratio of 200%, this is how limited principal stock settlement would apply:

Value of original preference share or capital instrument: £10



Value of the alternative Tier 1 instruments at time of issue:	£5
Redemption ratio set at time of issue:	2:1

- c) If the value of the alternative Tier 1 instrument at the time of redemption was £5.00, the redemption ratio would remain at 2:1. If the value of the alternative Tier 1 instrument fell to £2.50, holders of the original preference share or capital instrument would receive the cash equivalent of the value of the original preference share or capital instrument on redemption using the maximum allowable increase in the redemption ratio of 200%. The redemption ratio would rise to 4:1.
- d) If the value of the alternative Tier 1 instrument fell below £2.50, or a decrease of greater than 50%, holders of the original preference share or capital instrument would not recoup the full value of the original preference share or capital instrument.
- e) If the value of the alternative Tier 1 instrument increased above £5.00 holders of the original preference share or capital instrument would only recoup the value of the original preference share or capital instrument. For example, if the alternative Tier 1 instrument was £6.00 at the time of redemption, holders of the original preference share or capital instrument would only receive the cash equivalent of 83% of the value of the alternative Tier 1 instrument.

See s6.5

Preference shares and other instruments which do not fulfil all these conditions should be classed as Tier 2.

45 ~~Non-cumulative undated preference shares issued by vehicle companies as well as directly issued 'innovative' instruments may count as tier 1 capital under limited conditions. To fulfil these criteria, the issue should offer a level of loss absorbency analogous to a directly issued preference share. The issuer should, inter alia, have an independent legal/accounting opinion to this effect. In addition, this route is available only where the following provisions apply where innovative instruments are included in the calculation of the Tier 1 ratio:~~

- (a) ~~The issuer has a Tier 1 ratio of at least 6% at and immediately after issue. An issuer must meet the 6% ratio (excluding existing 'innovative' instruments) before it can raise additional 'innovative' capital; The issuer should be able to meet the requirement at all times for a capital ratio of 8% while excluding from Tier 1 anything other than Core Tier 1;~~
- (b) Only Core Tier 1 capital can count towards the €5mn minimum capital requirement.
- (c) ~~(b) the 6% ratio~~ Paragraph (a) applies at both the solo and consolidated level. Therefore, even if the capital were being raised for the solo entity, it would not be acceptable for those

~~requirements the 64% ratio~~ to be met at the solo level but not at the consolidated level; and

~~(d) The sum of 'innovative' instruments does~~ Innovative Tier 1 capital should not exceed 15% of overall total Tier 1.

(i) Total Tier 1 comprises Core Tier 1 plus Innovative Tier 1 less Tier 1 deductions.

(e) For the purpose of calculating the capital available to meet the Individual Capital Ratio, a breach of the 8% ratio in (a) does not result in an exclusion of the amount of Innovative Tier 1 capital already issued, or a reduction in the amount of allowable Tier 2 capital.

a) The 8% capital requirement in paragraph 5.1(5)(a) above includes all the requirements in the Banking Consolidation Directive about how to calculate capital. One of those requirements is the limit on Tier 2 capital to 100% of Tier 1 capital. Given that anything other than Core Tier 1 must be excluded from Tier 1 to meet the 8%, this means that a bank should have a minimum Core Tier 1 ratio of 4%.

b) The FSA considers that the breach of the 4% Core Tier 1 ratio, like the breach of the Individual Capital Ratio is a breach of the obligation to have adequate capital as set out in, for example, rule 3.3.13 of Chapter GN. In that situation, a bank should promptly submit to the FSA an appropriate remedial plan, addressing the breaches.

c) If a bank considers a breach of its 4% ratio or its Individual Capital Ratio is likely, it should submit a remedial plan well before the breach occurs.

Any bank wishing to undertake ~~such~~ Innovative Tier 1 issues should consult their supervisor ahead of making an issue.

...

#### **5.4 Indirectly issued Tier 1 capital and Minority Interests**

10 *Minority interests* arising from consolidation ~~in permanent shareholders' equity~~ may be included in Tier 1 capital.

a) *Minority interests* arise when a company has a subsidiary which it does not wholly own. The company's consolidated accounts usually include all of the assets of the subsidiary so it would be misleading to include only that part of its share capital and reserves that is owned by the company. The capital subscribed by the minority shareholders is therefore included in the consolidated capital base.

b) Where a Tier 1 instrument is indirectly issued via a special purpose vehicle, it would be classified as Innovative Tier 1 capital.

See s6.3 & s9.4

c) To minimise the risk that the capital may not be available to absorb losses, a bank should have an obligation to substitute the indirectly issued capital with directly issued Core Tier 1 capital upon a breach of the 8% capital ratio and the bank should take all reasonable steps to ensure it has, at all times, sufficient headroom and corporate authorisations to be able to directly issue Core Tier 1 capital if necessary.

d) If a bank considers raising capital through a subsidiary that the bank wants to treat as Tier 1 capital, it should seek individual guidance on whether the capital qualifies as Core or Innovative Tier 1.

11 Minority interests arising from ~~Tier 2 and 3~~ preference shares classified as Tier 2 and 3 for the issuing bank's solo requirements may be included in consolidated Tier 2 and 3 capital for the group's capital requirements.

## 5.5 Deductions from Tier 1 capital

12 Details of the items that should be deducted from Tier 1 capital are given below.

## 6 UPPER TIER 2 CAPITAL

This section provides detail on the constituent elements of Upper Tier 2 capital.

...

### 6.5 Hybrid capital instruments

a) 5

...

6 Upper Tier 2 capital instruments therefore include:

(a) Perpetual cumulative preferred shares, including:

(i) such shares redeemable at the option of the issuer and with the prior consent of the FSA; and

(ii) such shares convertible into ordinary shares. The shares should not be included within Tier 1 capital until the conversion has taken effect.

See s5.1

a) These shares are included in Tier 2 capital because they are cumulative. Non-cumulative perpetual preference shares ~~are~~ may be included in Tier 1.

...

### 6.6 Criteria for subordinated debt to be included in Upper Tier 2

See s8.2

7 In order to qualify as a hybrid capital instrument, and to therefore be eligible for inclusion in Upper Tier 2 capital, subordinated debt

should satisfy the conditions listed below, **as well as the general conditions for subordinated debt detailed under the section on subordinated debt below:**

(a) The debt should be perpetual, i.e. undated.

a) This is not a requirement under the ~~QFD (now replaced by The Banking Consolidation Directive)~~.

(b) ...

...

(c) **Deferral of interest:** The debt agreement should provide for the institution to have the option to defer any interest payment on the debt.

a) It is acceptable for deferred interest to bear interest, provided that it is not at a penal rate, i.e. provided that it is not materially different from the market rate.

(d) The debt agreement should provide for the debt and unpaid interest to be able to absorb losses, whilst leaving a bank able to continue trading. ~~This can be achieved in two ways: For that purpose, a debt agreement should meet the criteria on loss absorbency set out in 5.1(4)(h).~~

~~(i) — The debt agreement can provide for automatic conversion of the perpetual debt, and unpaid interest, into share capital where a *capital reconstruction* has not been undertaken and reserves become negative. In such cases the bank should maintain a sufficient margin of authorised but unissued share capital in order to allow a conversion of the debt into equity at any time.~~

~~e) — A *capital reconstruction* is the conversion of one type of capital into another, e.g. reserves into share capital.~~

~~(ii) — The debt agreement can specifically provide for the principal and interest on the debt to absorb losses where the bank would not otherwise be solvent, and for the subordinated creditors to be treated as if they were holders of a specified class of share capital in any liquidation of the bank~~

~~In this case the debt agreement provides for the debt to be treated as if it will be converted into share capital either on the day immediately preceding the presentation of a petition for the commencement of a winding-up of the bank, or on the date of the creditors' or shareholders' meeting at which the~~

See s8.2

~~relevant resolution for a winding up is passed. The debt agreement should contain an explicit warning to lenders that the debt can be treated in this way.~~

~~...~~

## **6.7 Convertible loanstock**

8 ~~Convertible loanstock is loanstock which may be converted into another form of capital. Conversions may be mandatory, or at the investors' or issuers' option, providing the following criteria are met. In addition to the criteria listed in 6.6, a convertible loanstock can be included in Upper Tier 2 providing it also meets the following criteria:~~

~~...~~

## **6.8 Repackaging perpetual debt**

9 ~~In order to improve the market for perpetuals some schemes have been proposed which involve the creation of an off-shore vehicle to hold the perpetuals which then issues securities of its own. Since these securities are not classified as holdings of bank capital, they are not required to be deducted from a bank's capital base and therefore are more attractive for other banks to hold. This is called *repackaging*.~~

10 ~~In order to accept repackaged debt as capital the FSA would need to be satisfied on two counts:~~

~~(a) the scheme should preserve the quality of capital for the issuer; and~~

~~a) This prevents the issuing bank from giving any new undertakings which might reduce the value of the perpetual as capital. For example, the issuer should continue to be able to suspend servicing the debt where necessary.~~

~~(b) the scheme should remove any exposure to the bank's creditworthiness from the instrument held by the investor.~~

~~a) This means that the principal and interest on the security issued by the vehicle should be protected from any risk attached to the underlying perpetual. This can be achieved, for example, if the vehicle also holds other assets of sufficient quality to cover the full face value of the perpetuals in its portfolio and if the interest payments are protected by an insurance scheme). The FSA should be satisfied that there is sufficient distance between the perpetuals and the securities for the securities to be considered non-deductible.~~

~~11 — Such schemes are applicable only to perpetuals that are already being traded. Under the terms of the Basel agreement, perpetuals should not be issued in a repackaged form (“instantly repackaged perpetuals”).~~

...

## **8 GENERAL CONDITIONS FOR SUBORDINATED DEBT**

...

### **8.3 Step-ups**

2 Issues of subordinated debt can contain options for the bank to repay the debt (in the case of perpetual debt), or prepay the debt prior to its maturity date (in the case of term debt). Failure to exercise the option sometimes leads to an increase in the interest rate paid on the debt. This is called a *step-up*.

3

...

4 The limits on step-ups are cumulative and apply to the all-in cost of the debt to the bank.

- a) The FSA considers that the inclusion of a step-up in a debt agreement signals the intention to repay the debt, as the inclusion of a large step-up will make the repayment of the debt preferable to paying a penal interest rate.
- b) The FSA objects to high step-ups, as they can make a bank’s capital expensive at a time when the reason that the issue has not been called is that alternative sources of finance are not readily available.
- c) Where a step-up arises through a change from paying a coupon on a debt instrument to paying a dividend on a share issued in settlement of the coupon, then any cost to the bank arising from the tax treatment of the dividend may be excluded.

...

## **12 REPAYMENT OF CAPITAL**

### **12.1 Repayment of Tier 1 capital**

~~1 — In general a bank should only repay or return Tier 1 capital where it has sufficient remaining Tier 1 to cover 60% of its target capital requirement. This test applies to external repayments (but not intra-group capital repayments by FSA regulated consolidated banking~~

groups) and should be passed at both the solo and the consolidated level.

a) ~~In this context the individual capital requirement is defined as the bank's individual capital ratio multiplied by weighted risk assets, plus supervisory deductions.~~

b) ~~The reason for defining the capital requirement in this way (as opposed to simply referring to 60% of the bank's individual capital ratio) is to ensure that the bank has sufficient Tier 1 to cover 60% of the capital needed to cover all parts of the group, including those where the FSA's supervisory treatment is capital deduction (e.g. life assurance companies) rather than line by line consolidation.~~

~~2~~ Subject to a bank satisfying the above test the FSA will only agree to the repayment or return of Tier 1 capital where a bank provides a capital plan covering its capital position for two years after the capital repayment. The plan should:

1 No repayment of Tier 1 capital should be made without the FSA's prior agreement. Any repayment should be part of a bank's capital plan that should:

- (a) demonstrate that the bank will remain in excess of its (group and solo) ~~capital~~ individual capital ratios (as defined above) for two years without relying on new capital issues;
- (b) be consistent with the bank's strategic and operating plans; and
- (c) take account of any possible acquisitions, locked-in capital in subsidiaries and the possibility of exceptional losses.
  - a) ...
  - b) ~~For repayment of intra-group capital it is normally sufficient for a bank to be above its individual capital ratio immediately after repayment, i.e. the need to remain above the individual capital ratio for at least two years does not apply.~~

## 12.2 Repayment of Tier 2 capital

See s12.1

2 ~~3~~

No early repayment of Tier 2 capital should be made without the FSA's prior agreement. The FSA will only agree to early repayment where a bank produces a capital plan, as described in the section on repayment of Tier 1 capital that shows that the bank will remain above its individual capital ratio for at least two years after the repayment.

- a) ~~As with Tier 1, for~~ For repayment of intra-group capital, it is normally sufficient for a bank to be above its individual capital ratio immediately after repayment, i.e. the need to remain above the target ratio for at least two years does not apply.

- See s8.2            3            Conditions which should be met for the repayment of Tier 2 subordinated debt are given under the section on general conditions for subordinated debt.
- See s6.6 & s7.2            4            Specific conditions which should be met for the repayment of Upper and Lower Tier 2 subordinated debt are given under the sections on Upper and Lower Tier 2 capital.

In the remainder of Section 12 of Chapter CA, the numbering of each paragraph numbered with an Arabic numeral is decreased by one, so that the existing paragraph 6 becomes 5 and so on. Subject to that, the remainder of that section is unchanged.

...



**INTERIM PRUDENTIAL SOURCEBOOK FOR BUILDING SOCIETIES  
(AMENDMENT NO 7) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

**Commencement**

- B. This instrument comes into force on 1 January 2004.

**Amendments to the Interim Prudential sourcebook for building societies**

- C. IPRU(BSOC) is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Interim Prudential Sourcebook for Building Societies (Amendment No 7) Instrument 2003.

By Order of the Board  
20 November 2003

## Annex

### Amendments to IPRU(BSOC)

In this Annex, underlining indicates new text and striking through indicates deleted text. Where entire new paragraphs are being inserted, the place where they go is indicated and the text is not underlined.

#### IPRU(BSOC) Volume 1

#### X. Introductory Chapter

...

#### X.6 The continuing 1986 Act

X.6.1G ...

After X.6.1G, insert the following new text:

#### **Modification of the 1986 Act by the Electronic Communications Order 2003**

X.6.2.1G The Building Societies Act 1986 (Electronic Communications) Order 2003 (SI 2003 No: 404) came into force on 20 March 2003. This Order modifies the 1986 Act and enables building societies, if they wish, to communicate electronically with their members on constitutional matters, including those of the type covered in volume 2 of this sourcebook. The Order amends sections 60, 61, 66A, 68, 69, 76, 81, 92A, 115 and 119, together with schedules 2, 8A, 11, 16 and 17 to the 1986 Act.

X.6.2.2G The Order clarifies the conditions a society must satisfy if it uses electronic communications to comply with requirements to notify members and other persons in relation to constitutional matters. It covers regular communication concerning the business to be transacted at annual general meetings, such as the provision of financial statements, notices of meeting, and arrangements for proxy voting or ballots. The Order also covers communications on occasional matters, such as special meetings, mergers and transfers of business. In all cases the consent of the member or other person to the means of communication must be obtained.

X.6.2.3G The Order does not amend the 1986 Act provisions under which societies submit certain returns that are placed on their public file. Nor does it affect those supervisory financial returns required under rules in SUP that are currently submitted electronically.

## X.7 Frequently Used Terms

X.7.1G The following terms are used frequently in the sourcebook and have the meaning described here:

...

the Commission the Building Societies Commission

the Electronic Communications Order 2003

The Building Societies Act 1986 (Electronic Communications) Order 2003 (SI 2003 No. 404). The Electronic Communications Act 2000 generally permits electronic communications as an effective alternative to paper based methods, with the consent of the parties (except where any relevant legislation shows a clear contrary intention). This Act also permits other primary legislation to be amended so as to facilitate electronic communication, and this Order has been made by the Treasury in exercise of that power. The Order came into force on 20 March 2003. More details are given at paragraphs X 6.2 to X.6.2.3

the FSA The Financial Services Authority

...

## IPRU(BSOC) Volume 2

### 1 APPLICATIONS FOR THE RIGHT TO OBTAIN ACCESS TO THE REGISTERS OF MEMBERS OF BUILDING SOCIETIES

#### G

...

#### 1.1 Introduction

1.1.1 This chapter gives guidance to building societies, and to those members of building societies considering making an application to the FSA about the exercise of the right to obtain access to the registers of members of building societies. This right is governed by the provisions of paragraph 15 of Schedule 2 to the 1986 Act. Since the functions under paragraph 15 of Schedule 2 to the 1986 Act have not been

amended by the Act, there is no material change in this guidance compared with the procedure and practice previously adopted by the Commission. Societies should be aware, however, that the Electronic Communications Order 2003 modifies various provisions of the 1986 Act to enable the use of electronic communications between societies, their members and other persons, subject to their consent. In particular, the Order provides for the inclusion of a member's electronic address in the register of members in addition to a postal address. The remaining text of this chapter has not been amended to take account of the Order, but the FSA will in general be prepared to use electronic communication if requested by the society or the applicant and some procedures may have to be adapted accordingly.

...

## 2 MERGER PROCEDURES

### G

...

#### 1. INTRODUCTION

...

- 1.13 **Taxes Acts:** Societies should take advice on the timing and amount of tax liabilities.

After 1.13, insert the following new paragraph:

1.14

**Electronic Communications Order 2003:** Societies should be aware that this Order modifies various relevant provisions of the 1986 Act. This enables the use of electronic communications between societies, their members and other persons on matters relating to a proposed merger, such as the Schedule 16 statement and the voting arrangements. The Order requires that societies must obtain consent before using electronic means of communication. The remaining text of this chapter has not been amended to take account of the Order. A society proposing to use electronic communications in relation to a merger will need to take its own legal advice as to how the procedures described in this chapter will have to be adapted. In that event the FSA will also adapt its own procedures appropriately.

...

**5**

## **CONFIRMATION**

...

### **Procedure**

5.20

The procedure to be followed in the confirmation process is prescribed by Part III, paragraphs 7 to 9, of Schedule 16 to the 1986 Act. Any interested party has the right to make written representations, and/or to give notice of intention to make oral representations to the Authority with respect to a society's application for confirmation. Written representations are to be copied to the participating societies, which are to be afforded the opportunity to comment on them in writing or orally at the hearing of their applications. (The FSA will in general be prepared to use electronic rather than paper-based communication if requested by the society or a prospective representer and some of the following procedures may have to be adapted accordingly.)

...

## **INDEX**

**Use of the Index** References are given by paragraph number

...

Dissolution: 7

Electronic Communications

Order 2003: 1.14

Effective Date  
(Amalgamation): 7.3

...

### 3 TRANSFER PROCEDURES

#### G

...

#### 1. INTRODUCTION

#### The Purpose of this Chapter

...

After 1.1 insert the following new paragraph:

1.1A **Electronic Communications Order 2003:** Societies should be aware that this Order modifies various relevant provisions of the 1986 Act. This enables the use of electronic communications between societies, their members and other persons on matters relating to a proposed transfer of business, such as the transfer statement and voting arrangements. The Order requires that societies must obtain consent before using electronic means of communication. The remaining text of this chapter has not been amended to take account of the Order. A society proposing to use electronic communications in relation to a transfer of business will need to take its own legal advice as to how the procedures described in this chapter will have to be adapted. In that event the FSA will also adapt its own procedures appropriately.

...

#### 6. CONFIRMATION

...

## Procedure

- 6.22 The procedure to be followed in confirmation proceedings is prescribed by Part II of Schedule 17 to the 1986 Act. Any interested party has the right to make written and/or oral representations to the Authority with respect to a society's application for confirmation. Written representations are to be copied to the society, which is to be afforded the opportunity to comment on them orally at the hearing of its application or in writing. (The FSA will in general be prepared to use electronic rather than paper-based communication if requested by the society or a prospective representer and some of the following procedures may have to be adapted accordingly.)

...

## INDEX

### Use of the Index

References are given by paragraph number (see also the Definitions and Notes on pages 3-6)

...

**Duplicate Accounts** (see also Deduplication of Register)  
Trustee Account Holders      3.15

**Electronic Communications Order 2003**  
Emoluments of Directors and Other Officers      1.1.1  
1.8; 3.24; 3.26-3.27; 4.2(f); 5.2-5.3; 5.34(i); 7.2(f)

...

## 4 MERGER CONFIRMATION PROCEDURES

### G

...

**4.3 Representations to the FSA**

...

4.3.2 Written representations, or notice of a person's intentions to make oral representations, or both, must be in writing. They must reach the FSA at 25 The North Colonnade, Canary Wharf, London E14 5HS by the date quoted in the merger

documentation issued to members and published in the official Gazettes and (usually) some newspapers. Persons who make written representations, but subsequently decide also to make oral representations must, nevertheless, give notice of that intention, in writing, to the FSA by the same date (paragraphs 8 and 9 of Schedule 16 to the 1986 Act). The FSA will in general be prepared to use electronic rather than paper-based communication for notices and written representations if requested by the society or a prospective representer. A specific electronic address will be provided for that purpose, and some of the relevant procedures may have to be adapted accordingly.

...

## 5 TRANSFER CONFIRMATION PROCEDURES

### G

...

#### 5.4 Making representations to the FSA

...

##### 5.4.2

Written representations, or written notice of a person's intention to make oral representations, or both, must be addressed to the Financial Services Authority and must reach the FSA at 25 The North Colonnade, Canary Wharf, London E14 5HS by the date quoted in the transfer documentation issued to members. Unwritten representations and notice (for example by telephone) cannot be accepted. ~~Written representations and notices transmitted by fax or E-mail can be accepted provided they are confirmed by the original signed copy which must be received by the FSA within 24 hours of the closing date.~~ Persons who make written representations but subsequently decide also to make oral representations must, nevertheless, give notice of that intention, in writing, to the FSA at the above address by the same date (paragraph 7 of Schedule 17 to the 1986 Act). The FSA will in general be prepared to use electronic rather than paper-based communication for notices and written representations if requested by the society or a prospective representer. A specific electronic address will be provided for that purpose, and some of the relevant procedures may have to be adapted accordingly.

...



**INTERIM PRUDENTIAL SOURCEBOOK FOR FRIENDLY SOCIETIES  
(GROUPS DIRECTIVE) (NO 2) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
- (1) section 138 (General rule-making power);
  - (2) section 150(2) (Actions for damages);
  - (3) section 156 (General supplementary powers); and
  - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 January 2004.

**Amendments to the Interim Prudential sourcebook for friendly societies**

- D. IPRU(FSOC) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Interim Prudential Sourcebook for Friendly Societies (Groups Directive) (No 2) Instrument 2003.

By Order of the Board  
20 November 2003

## Annex

### Amendments to IPRU(FSOC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### Chapter 7 DEFINITIONS

##### Part I Definitions

7.1 In this Part of the *IPRU(FSOC)*, unless the contrary intention appears, the following definitions apply –

...

*general insurance business amount* means the higher of -

(a) the total of:

(i) ~~the aggregate of the friendly society's insurance liabilities~~ (net of reinsurance ceded) in respect of *general insurance business* less debts:-

(A) which are due from dependants to which paragraph B11C of Part 1 of Annex B of Appendix 4 relates,

(B) which are not reinsurance which has already been netted off the friendly society's insurance liabilities, and

(C) which are included in general insurance business assets;

which amount is to be zero where the debts are greater than the friendly society's insurance liabilities, and

(ii) an amount equal to whichever is the greater of 400,000 Euro or 20% of the *general premium income*; or

(b) such other amount as the *friendly society* may select not exceeding:-

(i) the value of its ~~assets~~ general insurance business assets ~~(other than long-term insurance business assets and excluding reinsurance recoveries)~~ as determined in accordance with the *asset valuation rules*;

(ii) excluding debts due from dependants to which paragraph B11C of Part 1 of Annex B of Appendix 4 relates and reinsurance recoveries; and

(iii) less debts due to dependants of the friendly society included in general insurance business liabilities (excluding reinsurance recoveries, other than amounts due or that relate to claims already paid by the dependant) except that

for a dependant to which paragraph B11C of Part 1 of Annex B of Appendix 4 does not relate, the amount deducted will not exceed the dependant's surplus assets (or proportional share);

...

*long-term insurance business amount* means the higher of -

(a) the total of:

(i) ~~the amount of the friendly society's insurance liabilities in respect of long-term insurance business (net of reinsurance ceded and excluding property linked liabilities), together with~~ and the amount of any deposit back under a deposit-back arrangement in relation to a contract of reinsurance in respect of long-term insurance business;

(i) ~~the amount of the required margin of solvency (or the amount of the minimum guarantee fund if greater) determined in accordance with rules 4.2 and 4.5 and Appendix 1 less the amount of any implicit item valued in accordance with a waiver under section 148 of the Act, and~~

(ii) ~~the amount of any deposit-back in connection with a contract of reinsurance in respect of long-term insurance business; or~~

(A) excluding property linked liabilities; and

(B) less:

(i) the amount of any debt, that is a long-term insurance business asset (excluding reinsurance ceded which has already been deducted from the friendly society's insurance liabilities), due from a dependant to which paragraph B11C of Part 1 of Annex B of Appendix 4 relates, and

(ii) the amount of any implicit item valued in accordance with a waiver under section 148 of the Act;

(which amount is to be zero where the result is negative); and

(ii) the amount of the required minimum margin for its long-term insurance business determined in accordance with rules 4.2 and 4.5 and Appendix 1 (or, in the case of a friendly society whose head office is not in the United Kingdom, that amount which would apply if its head office were in the United Kingdom); or

(b) such other amount as the friendly society may select not exceeding the value of its assets ~~(other than general insurance business assets and excluding reinsurance recoveries and assets required to match property linked liabilities)~~ determined in accordance with the asset valuation rules,

(i) excluding:

(A) reinsurance recoveries;

(B) assets required to match *property linked liabilities*;

(C) debts due from *dependants* of the *friendly society* to which paragraph B11C of Part 1 of Annex B of Appendix 4 relates; and

(D) if the *friendly society* is a *general insurer*, *general insurance business assets*, and

(ii) less:

(A) if the *friendly society* is a *general insurer*, *debts due to dependants of the friendly society included in long-term insurance business liabilities (excluding reinsurance recoveries (other than amounts due or that relate to claims already paid by the dependant)), or*

(B) if the *friendly society* is not a *general insurer*, *debts due to dependants of the friendly society (excluding reinsurance recoveries (other than amounts due or that relate to claims already paid by the dependant))*;

but for the purposes of (ii) above, for *dependants* to which paragraph B11C of Part 1 of Annex B of Appendix 4 does not relate, the amount deducted will not exceed the *dependant's surplus assets (or proportional share)*;

except that for the purposes of determining the *permitted asset exposure limit* under paragraph B3 of Annex B of Appendix 4, *index linked liabilities* must also be excluded from (a)(i) and assets required to match such liabilities must be also excluded from (b);

...

**INTERIM PRUDENTIAL SOURCEBOOK FOR INSURERS  
(GROUPS DIRECTIVE) (NO 2) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
- (1) section 138 (General rule-making power);
  - (2) section 150(2) (Actions for damages);
  - (3) section 156 (General supplementary powers); and
  - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 January 2004.

**Amendments to the Interim Prudential sourcebook for insurers**

- D. IPRU(INS) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Interim Prudential Sourcebook for Insurers (Groups Directive) (No 2) Instrument 2003

By Order of the Board  
20 November 2003

## Annex

### Amendments to IPRU(INS)

In this Annex, underlining indicates new text and striking through indicates deleted text. In the case of the new text to be inserted in Guidance Note 4.1, the place where it goes is indicated, but it is not underlined.

#### Volume 1

...

#### Chapter 11 DEFINITIONS

##### PART I DEFINITIONS

11.1 For the purposes of *IPRU(INS)*, the term or phrase in the first column has the meaning given to it in the second column unless the context otherwise requires.

...	
<i>general insurance business amount</i>	<p>is the higher of -</p> <p>(a) the <del>aggregate</del> <u>total</u> of:</p> <p>(i) the <i>insurer's insurance liabilities</i> (net of <i>reinsurance ceded</i>) in respect of <i>general insurance business less debts</i> -</p> <p>(A) <u>which are due from dependants to which paragraph 11C of Part I of Appendix 4.2 relates,</u></p> <p>(B) <u>which are not reinsurance which has already been netted off the insurer's insurance liabilities, and</u></p> <p>(C) <u>which are included in general insurance business assets;</u></p> <p><u>which amount is to be zero where the debts are greater than the insurer's insurance liabilities, and</u></p>

	<p>(ii) an amount equal to whichever is the greater of 400,000 Euro or 20% of the <i>general premium income</i>; or</p> <p>(b) such other amount as the <i>insurer</i> may select not exceeding:-</p> <p>(i) the value of its <u>assets general insurance business assets</u> <del>(other than long-term insurance business assets and excluding reinsurance recoveries</del> as determined in accordance with the <i>Valuation of Assets Rules</i>,</p> <p>(ii) <u>excluding debts due from dependants to which paragraph 11C of Part I of Appendix 4.2 relates and reinsurance recoveries</u>; and</p> <p>(iii) <u>less debts due to dependants of the insurer included in general insurance business liabilities</u> (excluding <i>reinsurance recoveries</i>, other than amounts due or that relate to claims already paid by the <i>dependant</i>) <u>except that for a dependant to which paragraph 11C of Part I of Appendix 4.2 does not relate, the amount deducted will not exceed the dependant's surplus assets (or proportional share)</u></p>
...	
<i>long-term insurance business amount</i>	<p>is the higher of-</p> <p>(a) <u>the total of -</u></p> <p>(a)(i) <del>the amount of the insurer's insurance liabilities in respect of long-term insurance business (net of reinsurance ceded and excluding property linked liabilities), together with-</del> and the amount of any <u>deposit back under a deposit-back arrangement in relation to a contract of reinsurance in respect of long-term insurance business</u>;</p> <p>(A) <u>excluding property linked liabilities, and</u></p>

(B) less the amount of any debt, that is a long-term insurance business asset (excluding reinsurance that has already been netted off the insurer's insurance liabilities), due from a dependant to which paragraph 11C of Part I of Appendix 4.2 relates, and

(C) less the amount of any implicit item valued in accordance with a waiver under section 148 of the Act,

adjusted to zero where the result is negative; and

~~(ii) the amount of the required margin of solvency for its long-term insurance business (or the amount of the minimum guarantee fund if greater) determined in accordance with rules 2.5 to 2.9 and 2.4(3) (or, in the case of an insurer whose head office is not in the United Kingdom, that amount which would apply if its head office were in the United Kingdom) less the amount of any implicit item valued in accordance with a waiver under section 148 of the Act, and or~~

~~(iii) the amount of any deposit back in connection with a contract of reinsurance in respect of long-term insurance business; or~~

(b) such other amount as the insurer may select not exceeding the value of its assets ~~(other than general insurance business assets if the insurer is a general insurer and excluding reinsurance recoveries and assets required to match property linked liabilities)~~ valued in accordance with the Valuation of Assets Rules;



	<p>(i) <u>excluding:</u></p> <p>(A) <u>reinsurance recoveries;</u></p> <p>(B) <u>assets required to match <i>property linked liabilities</i>;</u></p> <p>(C) <u>debts due from <i>dependants</i> of the <i>insurer</i> to which paragraph 11C of Part I of Appendix 4.2 relates; and</u></p> <p>(D) <u>if the <i>insurer</i> is a <i>general insurer</i>, <i>general insurance business assets</i>, and</u></p> <p>(ii) <u>less:</u></p> <p>(A) <u>if the <i>insurer</i> is a <i>general insurer</i>, <i>debts due to <i>dependants</i> of the <i>insurer</i> included in <i>long-term insurance business liabilities</i> (excluding <i>reinsurance recoveries</i> (other than amounts due or that relate to claims already paid by the <i>dependant</i>)), or</i></u></p> <p>(B) <u>if the <i>insurer</i> is not a <i>general insurer</i>, <i>debts due to <i>dependants</i> of the <i>insurer</i> (excluding <i>reinsurance recoveries</i> (other than amounts due or that relate to claims already paid by the <i>dependant</i>)),</i></u></p> <p><u>but for the purposes of (ii) above, for <i>dependants</i> to which paragraph 11C of Part I of Appendix 4.2 does not relate, the amount deducted will not exceed the <i>dependant's surplus assets</i> (or <i>proportional share</i>),</u></p> <p>except that for the purposes of determining the <i>permitted asset exposure limit</i> under paragraph 2 of Part 1 of <b>Appendix 4.2</b>, <i>index linked liabilities</i> must also be excluded from (a)(i) and assets required to match such liabilities must be also excluded from (b)</p>
...	

**GUIDANCE NOTE 4.1** (rule 4.1)

**GUIDANCE FOR INSURERS AND AUDITORS ON THE VALUATION OF ASSETS  
RULES**

Paragraphs 5.49 and 5.50 of Guidance Note 4.1 are deleted and replaced by the following paragraphs:

**General insurance business amount**

- 5.49 The *general insurance business amount* is calculated as the higher of a liability based amount or an asset based amount. Because the value of some assets may be limited by reference to the *business amount*, the definition of the asset based amount indirectly refers to the *business amount* and so may indirectly refer to itself. To avoid any difficulty arising from this circularity, the *insurer* may select a lower amount for the asset based amount than the rule permits.

**Liability based amount**

The liability based amount is based on the *insurer's technical provisions* (i.e. amounts calculated in accordance with the rules for item C<sup>1</sup> of the Companies Act accounts) for *general insurance business*, net of *reinsurance ceded*. Certain *debts* due from *dependants* of the *insurer* should be subtracted from this (but, if necessary, the result is required to be taken as zero). An amount in lieu of solvency margin requirements is then required to be added.

The *debts* to be subtracted must be *general insurance business assets* and from those *dependants* to which paragraph 11C of Part I of **Appendix 4.2** relates. (This subtraction is made because such *debts* artificially increase the *insurer's business amount* and for these *dependants* only *surplus assets* (or *proportional share*) are used to increase the *insurer's exposure* to assets of a particular description.) Any *reinsurance* with a *dependant* that has already been netted off the *technical provisions* is not to be subtracted.

The amount to be added is the greater of:

- 400,000 Euro, and
- 20% of the *general premium income*.

For this purpose, *general premium income* represents, in effect, written accounted premiums gross of commission but net of *reinsurance*.

---

<sup>1</sup> Item D does not arise for *general insurance business*.

### **Asset based amount**

This must be no greater than the value of the *insurer's general insurance business assets*, with certain exclusions, determined in accordance with the *Valuation of Assets Rules*, less certain *debts* due to *dependants* of the *insurer*.

The assets to be excluded are *debts* due from those *dependants* to which paragraph 11C of Part I of **Appendix 4.2** relates and *reinsurance recoveries*.

The *debts* due to *dependants* to be subtracted must be *general insurance business liabilities* of the *insurer* and should exclude *reinsurance recoveries* (other than amounts due or that relate to claims already paid by the *dependant*). For a *dependant* to which paragraph 11C of Part I of **Appendix 4.2** does not relate, the amount subtracted is not to be more than the amount of the *dependant's surplus assets* (or *proportional share*).

### **Long-term business amount**

- 5.50 The *long-term insurance business amount* is calculated as the higher of a liability based amount or an asset based amount. Because the value of some assets may be limited by reference to the *business amount*, the definition of the asset based amount indirectly refers to the *business amount* and so may indirectly refer to itself. To avoid any difficulty arising from this circularity, the *insurer* may select a lower amount for the asset based amount than the rule permits. There are, in fact, two definitions of *long-term insurance business amount*. The definition used for calculating the *permitted counterparty exposure limits* or the *excess concentration* with a number of *counterparties*, is slightly different from that used for calculating the *permitted asset exposure limit*.

### **Liability based amount**

The liability based amount is based on the *insurer's insurance liabilities* (i.e. amounts calculated in accordance with the rules for items C and D of the Companies Act accounts) for *long-term insurance business*, net of *reinsurance ceded*. To this should be added the amount of each deposit back under a contract of long-term *reinsurance*. In these calculations *property linked liabilities* and, for calculating the *permitted asset exposure limit*, *index linked liabilities*, are excluded.

*Implicit items* and certain *debts* due from *dependants* of the *insurer* are subtracted from the resulting total (but, if necessary, the result is to be taken as zero). The amount of the *required margin of solvency* which the *insurer* is required to maintain for its *long-term insurance business* (or would be required to maintain if its head office were in the United Kingdom) should then be added.

The amounts to be subtracted are:

- the amount of any *implicit item* valued in accordance with a waiver under section 148 of the *Act* (see Guidance Note 2.2), and
- *debts*, that are *long-term insurance business assets*, from those *dependants* to which paragraph 11C of Part I of **Appendix 4.2** relates. Any *reinsurance* with a *dependant* that has already been netted off the *technical provisions* is not subtracted.

#### **Asset based amount**

This must be no greater than the value, determined in accordance with the *Valuation of Assets Rules*, of the *insurer's* assets with certain exclusions, less certain *debts* due to *dependants* of the *insurer*.

The assets to be excluded are:

- *reinsurance recoveries*,
- assets required to match *property linked liabilities*, and, for calculating the *permitted asset exposure limit*, *index linked liabilities*,
- *debts* due from those *dependants* to which paragraph 11C of Part I of **Appendix 4.2** relates, and
- if the *insurer* is a *general insurer* (as well as a *long-term insurer*), *general insurance business assets*.

The *debts* to be subtracted exclude *reinsurance recoveries* (other than amounts due or that relate to claims already paid by the *dependant*). For *dependants* to which paragraph 11C of Part I of **Appendix 4.2** does not relate, the amount subtracted is not to be more than the amount of the *dependant's surplus assets* (or *proportional share*). If the *insurer* is a *general insurer*, the *debts* to be subtracted must be *long-term insurance business liabilities* of the *insurer*.

Paragraph 5.51 of Guidance Note 4.1 is deleted and replaced by the following.

[paragraph 5.51 deleted]

...

**INTERIM PRUDENTIAL SOURCEBOOK FOR INSURERS  
(AMENDMENT NO 5) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

**Commencement**

- B. This instrument comes into force on 1 January 2004.

**Amendments to the Interim Prudential sourcebook for insurers**

- C. IPRU(INS) is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Interim Prudential Sourcebook for Insurers (Amendment No 5) Instrument 2003.

By Order of the Board  
20 November 2003

## Annex

### Amendments to the Interim Prudential sourcebook for insurers

In this Annex, underlining indicates new text and striking through indicates deleted text.

...

#### GUIDANCE NOTE 4.4

#### LINKED CONTRACTS

...

##### Funds ‘falling within the UCITS Directive’

- 5.16 The *FSA* takes the view that this phrase (which occurs in paragraph 5(a) of **Appendix 3.2** and which determines whether or not look-through is necessary - see 5.13) refers to those schemes which fulfil the minimum requirements set out in that Directive to receive the ‘single passport’, whether or not they have applied for that status. ~~The *FSA* takes the view that all UK authorised funds classified as *securities* funds ‘fall within’ the Directive and all others fall outside.~~

...

**INTERIM PRUDENTIAL SOURCEBOOK FOR INVESTMENT BUSINESSES  
(AMENDMENT NO 7) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers); and
  - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 January 2004.

**Amendments to the Interim Prudential sourcebook for investment businesses**

- D. IPRU(INV) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Interim Prudential Sourcebook for Investment Businesses (Amendment No 7) Instrument 2003.

By Order of the Board  
20 November 2003

## Annex

### Amendments to the Interim Prudential sourcebook for investment businesses

In this Annex, underlining indicates new text and striking through indicates deleted text.

...

#### EXCEPTIONS FROM THE LIQUID CAPITAL REQUIREMENT

- 5.2.3(2) R The *financial resources requirement* for a *firm* which is not an *ISD firm* is an *own funds requirement* determined in accordance with paragraph (a) of rule 5.2.3(3) if:
- (a) ...
  - (b) ...
  - (c) the *firm* is a *trustee* of an *authorised unit trust scheme* whose *permitted business* consists only of trustee activities and does not include any other activity constituting *specified trustee business* or the *firm* is a *depository* of an *ICVC* whose *permitted business* consists only of *depository activities*; ~~or~~
  - (d) the *firm's permitted business* limits it to acting as the *operator* of a *collective investment scheme* whose main purpose is to invest in *permitted immovables* whether in the *UK* or abroad.

...



Annex D

[Required Forms]

...

3. Securities and Futures Firms which are not Investment Firms  
(former SFA Non-ISD firms)

### **3.1 Approved Form of Subordinated Loan Agreement**

#### **A. Front Page**

**THIS AGREEMENT** is made on the date set out in the Variable Terms (as set out in **Schedule 1** to this Agreement) and is to be effective on that date unless a different effective date is set out in those terms

**BETWEEN -**

- (1) **the Lender** (as defined in the Standard Terms set out in **Schedule 2** to this Agreement), and
- (2) **the Borrower** (as defined in the Standard Terms), ~~and~~
- (3) ~~**The Financial Services Authority Limited** whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS.~~

...

## Schedule 2

### C. Standard Terms

...

#### **€The FSA and indemnity**

- 10** The FSA shall not, by virtue of having rights under ~~being a party to~~ this Agreement, be taken to be a trustee for, or have any obligations to, any person to whom some or all of the Senior Liabilities are owed. Each of the Lender and Borrower shall on demand indemnify the FSA against all claims, losses, costs, expenses and other liabilities made against or incurred by the FSA as a consequence of it having rights ~~being a party to~~, or taking action under this Agreement.

...

#### **Amendments**

- 13** Any amendments to this Agreement must be made by the prescribed Deed of Variation and any amendments made or purported to be made without the consent of the FSA shall be void. For the avoidance of doubt, nothing in this paragraph requires the FSA to be a party to this Agreement.

...

- 16** ...

#### **Rights of the FSA**

- 17** Although not a party to the Agreement, the FSA may in its own right enforce a term of the Agreement to the extent that it purports to confer upon the FSA a benefit.

~~Approved Form Of Subordinated Loan Agreement~~

~~D. Signature Page~~

The Common Seal of  
~~THE FINANCIAL SERVICES~~  
~~AUTHORITY LIMITED~~  
was hereunto affixed in the presence of

.....  
~~(Authorised signatory) — (Authorised signatory)~~

### 3.3 FORM OF DEED OF VARIATION

...

#### IT IS AGREED THAT -

1. The Agreement shall be deemed varied [, in accordance with its terms,] from [the date of this Deed of Variation/insert relevant future date] so that: the FSA is no longer a party to the agreement. Any obligation owed to or by, and any requirement for any consent or permission to be given to or by FSA shall be of no further effect. FSA is hereby released from each and every obligation owed by it under the Agreement. Although on execution of this deed the FSA is no longer a party to the Agreement, it may in its own right enforce a term of the Agreement to the extent that it purports to confer upon the FSA a benefit.

[insert additional clauses/details of amended clauses].

...

### 3.4 FORM OF GUARANTOR UNDERTAKING

This undertaking is entered into the [ ] day of [ ] 20[ ] by

~~BETWEEN:-~~

~~(1)~~ [ ] (the “Guarantor”) of [ ]; and in favour of

~~(2)~~ **The Financial Services Authority Limited** (“the FSA”) whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS.

...

IT IS HEREBY AGREED as follows:-

- 1 The Guarantor hereby undertakes ~~and confirms~~ to the FSA that all and any rights which the Guarantor may have against the Borrower in respect of the Guarantee (whether by subrogation or otherwise howsoever) shall be subordinated on the same terms and conditions (mutatis mutandis) set out in the Loan Agreement (as amended from time to time) and further undertakes and confirms that the Guarantor will be bound by the terms of the Loan Agreement as if the Guarantor were a party to it in place of the Lender.
- 2 This undertaking is governed by English law.

IN WITNESS whereof this deed has been executed by the ~~parties~~ Guarantor on the date first above written.

Executed as a Deed by  
[ ]

Witness:.....

Witness's Name: .....

Witness's Address: .....  
.....

The Common Seal of \_\_\_\_\_ )  
The Financial Services Authority Limited )  
was hereunto affixed in the presence of: )  
\_\_\_\_\_)  
\_\_\_\_\_) *Authorised Signatory*

### 3.5 Guidance Notes on Completion of Agreements

...

#### Preparation of the Agreement

4. (a) The form containing the Variable Terms may be completed or re-typed according to preference.
- (b) Rather than re-type the Standard Terms (Schedule 2), firms should simply **photocopy Schedule 2 of the FSA precedent (or print it from the website) and include it as part of the original Agreement.** ~~This avoids the need for the FSA to have to proof read the Standard Terms in each case which means that the FSA can process the Agreement more speedily and, of course, saves work for the firm in having to re-type the document.~~

#### Approval

5. ~~[Deleted]~~
  - ~~(a) Firms should submit the proposed agreements to the FSA in **draft form** for its approval, marked for the attention of the appropriate inspector. If this practice is followed, any change required by the FSA can be effected without the firm and the lender having to re-execute the documents.~~
  - ~~(b) When considering whether to approve the proposed agreement, the FSA will rely on a full disclosure to it of the circumstances giving rise to the giving of the loan or facility and its effective subordination. Attention is drawn in particular to paragraphs 6 and 7 of the Standard Terms (representations and undertakings).~~

...

## B NOTES ON VARIABLE TERMS

### Dates

7. ~~Paragraph 1: The **Date of the Agreement** should be left blank by the firm. This Date will be completed by the FSA when it ultimately executes the agreement.~~

~~Paragraph 12: If the **Effective Date of the Agreement** is to be different from the Date of the Agreement, care should be taken to record this in paragraph 2. Where this is the case, the Effective Date will normally be expected to be later than the Date of the Agreement. If the Effective Date is to be a date prior to the date of the Agreement (for example because the loan was drawn down before the Agreement was put in place), the firm will be expected to provide a reasonable explanation to the FSA as to why it was not possible to document the loan more promptly.~~

...

## C NOTES ON STANDARD TERMS

### Representations and undertakings

22. Paragraphs 6(f) and 7(f): ~~Before giving its consent, the FSA will need to be satisfied that the~~ The guarantor or other provider of security must ~~has~~ waived its right of subrogation against the borrower until all Senior Liabilities of the borrower have been paid in full. A form of deed for this purpose is available from the FSA.

...

## D SIGNATURE PAGE

### Arrangements for execution~~post FSA approval~~

25. ~~(a)~~ Two ~~Three~~ identical original Agreements (i.e. the front page, the two Schedules and the signature page, each copy stapled or otherwise bound together) should be prepared for signature. Firms and lenders may use any of the execution forms set out in Notes 34-35 below.
- ~~(b)~~ ~~*Leaving the date of the Agreement in the Variable Terms blank,*~~ the lender and borrower should execute the three original Agreements, initial any manuscript amendments and forward them to the appropriate FSA inspector so that they may be executed by the FSA.
- ~~(c)~~ The Date of the Agreement in paragraph 2 of the Variable Terms will be filled in by the FSA as the last party to sign the Agreement

...

## F Execution

...

### ~~Execution by the FSA~~

34. ~~The three original Agreements will then be executed by the FSA. Two of the executed Agreements will be returned to the firm. The third will be retained by the FSA for safekeeping.~~

...



...

PRESCRIBED SUBORDINATED LOAN AGREEMENT	
...	
NOW IT IS HEREBY AGREED as follows:	
...	
14.	...
<u>15. Rights of the FSA</u>	<u>Although not a party to the agreement, the FSA may in its own right enforce a term of the agreement to the extent that it purports to confer upon the FSA a benefit.</u>
<del>15.16.</del> Notices	Any notice of demand to be given or made hereunder may be delivered by hand or sent by first class registered or pre-paid post to the recipient at the address first above mentioned or such other address as it shall last notify to each of the other parties hereto. Such notice shall be deemed to have been received:  (a) if delivered by hand, on the day of delivery; (b) if sent by first class registered or pre-paid post three days after the date of despatch (as to which the sender's certificate shall be conclusive).
<del>16.17.</del> Counterparts	This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.  IN WITNESS whereof the parties hereto have executed this Agreement as a deed the day and date first above written.

...

**10 Securities and Futures Firms which are Investment Firms  
(former SFA ISD Firms)**

**10.1 Approved Form of Long-Term Subordinated Loan Agreement**

**A. Front Page**

**THIS AGREEMENT** is made on the date set out in the Variable Terms (as set out in **Schedule 1** to this Agreement) and is to be effective on that date unless a different effective date is set out in those terms

**BETWEEN -**

- (1) **the Lender** (as defined in the Standard Terms set out in **Schedule 2** to this Agreement), and
- (2) **the Borrower** (as defined in the Standard Terms), ~~and~~
- (3) ~~The Financial Services Authority Limited whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS.~~

...

## Schedule 2

### C. Standard Terms

...

#### **The FSA and indemnity**

- 10 ~~The~~ FSA shall not, by virtue of having rights under ~~being a party to~~ this Agreement, be taken to be a trustee or other fiduciary for, or have any obligations to, any person to whom some or all of the Senior Liabilities are owed. Each of the Lender and Borrower shall on demand indemnify the FSA against all claims, losses, costs, expenses and other liabilities made against or incurred by the FSA as a consequence of it having rights being ~~a party to~~, or taking action under this Agreement.

...

#### **Amendments**

- 13 Any amendments to this Agreement must be made by the prescribed Deed of Variation and any amendments made or purported to be made without the consent of the FSA shall be void. For the avoidance of doubt, nothing in this paragraph requires the FSA to be a party to this Agreement.

...

#### **Jurisdiction**

- 16 ...

#### **Rights of the FSA**

- 17 Although not a party to the Agreement, the FSA may in its own right enforce a term of the Agreement to the extent that it purports to confer upon the FSA a benefit.

~~Approved Form Of Subordinated Loan Agreement~~

~~D. Signature Page~~

~~The Common Seal of  
THE FINANCIAL SERVICES  
AUTHORITY LIMITED  
was hereunto affixed in the presence of~~

~~.....  
(Authorised signatory) \_\_\_\_\_ (Authorised signatory) .....~~

## 10.2 Approved Form of Short-Term Subordinated Loan Agreement

### A. Front Page

**THIS AGREEMENT** is made on the date set out in the Variable Terms (as set out in **Schedule 1** to this Agreement) and is to be effective on that date unless a different effective date is set out in those terms

**BETWEEN -**

- (1) **the Lender** (as defined in the Standard Terms set out in **Schedule 2** to this Agreement), and
- (2) **the Borrower** (as defined in the Standard Terms), ~~and~~
- ~~(3) **The Financial Services Authority Limited** whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS.~~

...

## Schedule 2

### C. Standard Terms

...

#### **The FSA and indemnity**

- 10 ~~¶~~The FSA shall not, by virtue of having rights under being a party to this Agreement, be taken to be a trustee or other fiduciary for, or have any obligations to, any person to whom some or all of the Senior Liabilities are owed. Each of the Lender and Borrower shall on demand indemnify the FSA against all claims, losses, costs, expenses and other liabilities made against or incurred by the FSA as a consequence of it having rights being a party to, or taking action under this Agreement.

...

#### **Amendments**

- 13 Any amendments to this Agreement must be made by the prescribed Deed of Variation and any amendments made or purported to be made without the consent of the FSA shall be void. For the avoidance of doubt, nothing in this paragraph requires the FSA to be a party to this Agreement.

...

#### **Jurisdiction**

- 16 ...

#### **Rights of the FSA**

- 17 Although not a party to the Agreement, the FSA may in its own right enforce a term of the Agreement to the extent that it purports to confer upon the FSA a benefit.

~~Approved Form Of Subordinated Loan Agreement~~

~~D. Signature Page~~

~~The Common Seal of  
THE FINANCIAL SERVICES  
AUTHORITY LIMITED  
was hereunto affixed in the presence of~~

~~.....  
(Authorised signatory) — (Authorised signatory)~~

## 10.4 FORM OF DEED OF VARIATION

...

### IT IS AGREED THAT -

1. The Agreement shall be deemed varied [, in accordance with its terms,] from [the date of this Deed of Variation/insert relevant future date] so that: the FSA is no longer a party to the Agreement. Any obligation owed to or by, and any requirement for any consent or permission to be given to or by, FSA shall be of no further effect. FSA is hereby released from each and every obligation owed by it under the Agreement. Although on the execution of this deed the FSA is no longer a party to the Agreement, it may in its own right enforce a term of the Agreement to the extent that it purports to confer upon the FSA a benefit.

[insert additional clauses/details of amended clauses].

...



## 10.5 FORM OF GUARANTOR UNDERTAKING

This undertaking is entered into the [ ] day of [ ] 20[ ] by

~~BETWEEN:-~~

(1) ~~—~~[ ] (the “Guarantor”) of [ ] ~~;~~ and in favour of

(2) ~~—~~**The Financial Services Authority Limited** (“the FSA”) whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS.

...

IT IS HEREBY AGREED as follows:-

- 1 The Guarantor hereby undertakes ~~and confirms~~ to the FSA that all and any rights which the Guarantor may have against the Borrower in respect of the Guarantee (whether by subrogation or otherwise howsoever) shall be subordinated on the same terms and conditions (mutatis mutandis) set out in the Loan Agreement (as amended from time to time) and further undertakes and confirms that the Guarantor will be bound by the terms of the Loan Agreement as if the Guarantor were a party to it in place of the Lender.
- 2 This undertaking is governed by English law.

...

~~The Common Seal of  
The Financial Services Authority Limited  
was hereunto affixed in the presence of:~~

.....  
~~Authorised Signatory~~

.....  
~~Authorised Signatory~~

## 10.8 Guidance Notes on Completion of Agreements

### A GENERAL

...

#### Preparation of the Agreement

4. (a) The form containing the Variable Terms may be completed or re-typed according to preference.
- (b) Rather than re-type the Standard Terms (Schedule 2), firms should simply **photocopy Schedule 2 of the FSA precedent or print it from the website and include it as part of the original Agreement.** ~~This avoids the need for the FSA to have to proof read the Standard Terms in each case which means that the FSA can process the Agreement more speedily and, of course, saves work for the firm in having to re-type the document.~~

#### ~~Approval~~

5. ~~[Deleted]~~
  - (a) ~~Firms should submit the proposed agreements to the FSA in **draft form** for its approval, marked for the attention of the appropriate inspector. If this practice is followed, any change required by the FSA can be effected without the firm and the lender having to re-execute the documents.~~
  - (b) ~~When considering whether to approve the proposed agreement, the the FSA will rely on a full disclosure to it of the circumstances giving rise to the giving of the loan or facility and its effective subordination. Attention is drawn in particular to paragraphs 6 and 7 of the Standard Terms (representations and undertakings).~~

...

### B NOTES ON VARIABLE TERMS

#### Dates

7. ~~Paragraph 1: The **Date of the Agreement** should be left blank by the firm. This Date will be completed by the FSA when it ultimately executes the agreement.~~
- ~~Paragraph 2: If the **Effective Date of the Agreement** is to be different from the Date of the Agreement, care should be taken to record this in paragraph 2. Where this is the case, the Effective Date will normally be expected to be later than the Date of the Agreement. If the Effective Date is to be a date prior to the date of the Agreement (for example because the loan was drawn down before the Agreement was put in place), the firm will be expected to provide a~~

reasonable explanation to the FSA as to why it was not possible to document the loan more promptly.

...

## **C NOTES ON STANDARD TERMS**

### **Representations and undertakings**

25. Paragraphs 6(f) and 7(f): ~~Before giving its consent, the FSA will need to be satisfied that the~~ The guarantor or other provider of security must ~~has~~-waived its right of subrogation against the borrower until all Senior Liabilities of the borrower have been paid in full. A form of deed for this purpose is available from the FSA.

...

## **D SIGNATURE PAGE**

### **Arrangements for execution~~post the FSA approval~~**

28. ~~(a) —~~ **Three**~~Two~~ **identical original Agreements** (i.e. the front page, the two Schedules and the signature page, each copy stapled or otherwise bound together) should be prepared for signature. Firms and lenders may use any of the execution forms set out in Notes 34-35 below.
- ~~(b) —~~ *Leaving the date of the Agreement in the Variable Terms blank*, the lender and borrower should execute the three original Agreements, initial any manuscript amendments and forward them to the appropriate the FSA inspector so that they may be executed by the FSA.
- ~~(c) —~~ The Date of the Agreement in paragraph 2 of the Variable Terms will be filled in by the FSA as the last party to sign the Agreement.

...

## **F Execution**

...

### **Execution by the FSA**

38. ~~The three original Agreements will then be executed by the FSA. Two of the executed Agreements will be returned to the firm. The third will be retained by the FSA for safekeeping.~~

...

**13 Personal Investment Firms  
(former PIA firms)**

...

**13.1 FORM OF SUBORDINATED LOAN AGREEMENT FOR PERSONAL  
INVESTMENT FIRMS (SEE IPRU (INV) 13)**

THIS SUBORDINATED LOAN AGREEMENT IS MADE ON 20

**BETWEEN:-**

(1) [ ] of

[ ]  
(the "Lender" which term includes its permitted successors and assigns); and

(2) [ ] of  
[ ]  
(the "Borrower" which term includes its permitted successors and assigns); and  
[ ] of

[ ],  
[ ] of  
[ ] and  
[ ] of  
[ ]  
the individual partners of the Borrower as such partners and as individuals ~~\*\*\*]. and~~

~~(3) The FINANCIAL SERVICES AUTHORITY LTD ("FSA") whose registered  
office is at 25 North Colonnade, Canary Wharf, London, E14 5HS.~~

...

**7. DOCUMENTATION**

This Agreement forms the entire agreement as to the Subordinated Liabilities. If there are any other terms relating to the Subordinated Liabilities existing at the date of this Agreement and not comprised in it such terms shall be of no further force and effect. No variation of or amendment to this Agreement shall be of any effect unless it is in writing signed by all the parties. Any amendment to this Agreement made or purported to be made without the consent of FSA shall be void. For the avoidance of doubt, nothing in this paragraph requires the FSA to be a party to this agreement.

...

**10. LAW [AND JURISDICTION]**

(1) This Agreement is governed by [English law +++++] [the law of Scotland +] [the law of Northern Ireland +++++] and, for the benefit of FSA solely, each of the Borrower and the Lender irrevocably submits to the jurisdiction of the [English Courts +++++] [Court of Session, Scotland +] [Northern Irish Courts +++++] (and, to the extent that it does not have a place of business within this jurisdiction, appoints [*name and address of agent for service*] as agent for receipt of service of process in such courts). Such jurisdiction shall be non-exclusive except to the extent that such non-exclusivity prejudices the submission to such jurisdiction.

(2) Although not a party to the agreement, the FSA may in its own right enforce a term of the agreement to the extent that it purports to confer upon the FSA a benefit.

IN WITNESS whereof the parties hereto have duly executed this Agreement as a Deed  
the day and year first above written.

...

~~(EXECUTED AS A DEED and DELIVERED by~~

~~(the FINANCIAL SERVICES AUTHORITY Ltd~~

~~(and signed by:~~

~~Authorised Signatory~~

~~Authorised Signatory/Secretary~~

Dated this                    day of                    20

**BETWEEN**

**the Lender**

and

**the Borrower**

and

~~The FINANCIAL SERVICES AUTHORITY  
LTD~~

---

**SUBORDINATED  
LOAN AGREEMENT**

---

**WITH-PROFITS GOVERNANCE (AMENDMENT) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions of the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 157(1) (Guidance); and
  - (3) section 156 (General supplementary powers).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 31 March 2004.

**Amendments to the Conduct of Business sourcebook**

- D. The Conduct of Business sourcebook is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the With-Profits Governance (Amendment) Instrument 2003.

By Order of the Board  
20 November 2003

## Annex

### Amendments to the Conduct of Business sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. The text amended as shown in this Annex is made but not yet in force.<sup>1</sup>

#### 6.10 Principles and Practices of Financial Management (PPFM)

##### Application and purpose

##### Application

- 6.10.1 R (1) ~~This chapter applies to a *firm* carrying on *with-profits business* other than:~~
- ~~(a) a *non-directive friendly society*; or~~
  - ~~(b) an *EEA insurer*.~~
- (2) ~~This chapter does not apply to *with-profits business* that consists of effecting or carrying out *Holloway sickness policies*.~~
- 6.10.1 R (1) The whole of this section, except COB 6.10.4AG and COB 6.10.21AR to COB 6.10.21JG, applies to a *firm* that:
- (a) carries on *with-profits business*;
  - (b) is not an *EEA insurer*; and
  - (c) is not a *non-directive friendly society*.
- (2) COB 6.10.4AG and COB 6.10.21AR to COB 6.10.21JG apply only to an *EEA insurer* that carries on *with-profits business*.
- (3) This section does not apply to *with-profits business* that consists of effecting or carrying out *Holloway sickness policies*.

...

##### Purpose

...

---

<sup>1</sup> The text was made through the With-Profits Governance Instrument 2003, which comes into force on 31 March 2004.



- 6.10.4 G *A firm's Principles and Practices of Financial Management* also play an important role in promoting confidence among *with-profits policyholders* and in the governance arrangements for *with-profits business* set out in COB 6.11 (Reporting to *with-profits policyholders* on compliance with PPFM).
- 6.10.4A G The effect of COB 6.10.21AR, COB 6.10.21BR and COB 6.10.21CG is that an EEA insurer that carries on with-profits business must provide its UK with-profits policyholders with information equivalent in scope and content to the information that a UK insurer must provide in the form of Principles and Practices of Financial Management.
- ...
- 6.10.21 G Changes to the *with-profits practices* of a *firm* may trigger one or more of the *firm's* obligations to notify the FSA under SUP 15.3 (General notification requirements).
- 6.10.21A R An EEA insurer must, on the request of any with-profits policyholder who is habitually resident in the United Kingdom, provide the information necessary to enable that policyholder properly to understand the essential elements of the insurer's commitment under the policy.
- 6.10.21B R The information provided under COB 6.10.21AR must not be narrower in scope or less detailed in content than the equivalent PPFM under COB 6.10.22R to COB 6.10.62R.
- 6.10.21C G An EEA insurer should indicate in any annual statements sent to with-profits policyholders that the information provided under COB 6.10.21AR is available on request. The PPFM might also be published on an EEA insurer's website.
- 6.10.21D R An EEA insurer must send its with-profits policyholders who are habitually resident in the United Kingdom, written notice, setting out any proposed changes to that part of the information provided under COB 6.10.21AR that is equivalent in substance to the with-profits principles of a firm to which COB 6.10.1R(1) applies.
- 6.10.21E R An EEA insurer must send the notice provided under COB 6.10.21DR three months in advance of the effective date of the proposed changes.
- 6.10.21F R An EEA insurer may send the notice provided under COB 6.10.21DR only to those policyholders affected by the information being changed.
- 6.10.21G G An EEA insurer may give the notice provided under COB 6.10.21DR by including the required information in any annual statements sent to with-profits policyholders if this is at least three months in advance of the effective date of the proposed changes.
- 6.10.21H R An EEA insurer must send its with-profits policyholders who are habitually resident in the United Kingdom, written notice, setting out any changes to that part of the information provided under COB 6.10.21AR that is equivalent in substance to the with-profits practices of a firm to which COB 6.10.1R(1) applies.

6.10.21I    R    An EEA insurer may send the notice provided under COB 6.10.21HR only to those policyholders affected by the information being changed.

6.10.21J    G    An EEA insurer may give the notice provided under COB 6.10.21HR by including the required information in any annual statements sent to with-profits policyholders. The notice can be in arrears but should be within a reasonable time period from the effective date of the change.

...

**OVERSEAS STABILISATION (HONG KONG)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 144 (Price stabilising rules);
  - (2) section 156 (General supplementary powers); and
  - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 January 2004.

**Amendments to MAR**

- D. The Market conduct sourcebook is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Overseas Stabilisation (Hong Kong) Instrument 2003.

By Order of the Board  
20 November 2003

## Annex

### Amendments to the Market conduct sourcebook

In this Annex underlining indicates new text and striking through indicates deleted text.

...

#### 2.8 Overseas Stabilisation

2.8.1G Under sections 144(3) and (6) of the *Act*, the *FSA* may make *rules* which confer a “safe harbour” in respect of one type of market manipulation (section 397(3)) on *persons* who act in conformity with specified provisions of foreign laws. Under that power, the *FSA* “specifies” certain legislative provisions having effect in the United States of America ~~and in~~ Japan and Hong Kong. It should be noted that conformity with these provisions may assist in proceedings under section 397(3) but not in proceedings under section 397(2) nor in proceedings under Part V of the Criminal Justice Act 1993 (insider dealing). This is because of the wording of section 144(3).

- 2.8.2R (1) A person who, in any place outside the *United Kingdom*, acts or engages in conduct:
- (a) for the purposes of stabilising the price of *investments*; and
  - (b) in conformity with the provisions specified in (2) ~~or, as the case may be, in (3);~~ (3) or (3A); and
  - (c) ...

(2) ...

(3) ...

(3A) In relation to Hong Kong, the specified provisions are:

The Securities and Futures (Price Stabilizing) Rules, Cap. 571W made by the Hong Kong Securities and Futures Commission.

(4) ...

(5) The provisions in (2), (3) and ~~(3)~~(3A) are specified as they have effect from time to time, so long as this paragraph has effect.

...

## **LLOYD'S COMPENSATION (AMENDMENT) INSTRUMENT 2003**

### **Powers exercised**

- A. The Financial Services Authority amends the Compensation sourcebook in the exercise of the following powers and related provisions in the Act:
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 213 (The compensation scheme); and
  - (4) section 214 (General).
- B. The rule-making powers listed in A above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

### **Commencement**

- C. This instrument comes into force on 1 January 2004.

### **Amendments to the Compensation sourcebook**

- D. The Compensation sourcebook is amended in accordance with the Annex to this instrument.

### **Citation**

- E. This instrument may be cited as the Lloyd's Compensation (Amendment) Instrument 2003.

By Order of the Board  
20 November 2003

## Annex

### Amendment to the Compensation sourcebook

In this annex text in square brackets indicates provisions already made<sup>1</sup> but coming into force on 1 January 2004. Rule COMP 13.4.21R (Levies on the Society of Lloyd's) is now modified as indicated by inserting the text underlined below:

#### [Levies on the Society of Lloyd's]

[13.4.21 R The *FSCS* may impose a levy on the *Society* to be calculated as the aggregate of the levies that would be imposed on each *member* if this chapter applied to *members*, as follows:

- (a) a share of any un-expired portion of an *establishment costs levy*;
- (b) a proportionate share of a *base costs levy* in respect of the *compensation scheme's* costs for the period from 1 January 2004 to the end of the *compensation scheme's* financial year and a share of such levies for all subsequent financial years;
- (c) a *specific costs levy* and a *compensation costs levy* in respect of costs arising out of a *relevant person* being *in default*, arrangements made under *COMP 3.3.1R* or measures taken under *COMP 3.3.3R* where];

(i) [the default occurs or the circumstances giving rise to the arrangements being made or the measures being taken, as the case may be, occur]; and

(ii) the *protected contracts of insurance* in connection with which the costs arise were entered into;

on or [after 1 January 2004.]

---

<sup>1</sup> The text was made through the Lloyd's Compensation Instrument 2003.

**APPLICATION FEES (UNAUTHORISED MUTUAL SOCIETIES  
REGISTRATION) (2003/2004) (NO 2) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 156 (General supplementary powers); and
  - (2) paragraph 17(1) of Schedule 1 (Fees).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 December 2003.

**Amendment to Unauthorised mutuals registration fees rules**

- D. The Unauthorised mutuals registration fees rules are amended as set out in the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Application Fees (Unauthorised Mutual Societies Registration) (2003/2004) (No 2) Instrument 2003.

By Order of the Board  
20 November 2003

## Annex

### Amendments to the Unauthorised mutuals registration fees rules

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### ANNEX 1R

#### FEES PAYABLE IN RELATION TO THE PERIOD FROM 1 APRIL 2003 TO 31 MARCH 2004

...

#### Application fees payable to register a new society other than a credit union

Transaction	Amount Payable (£)
Application using <i>model rules</i> without any amendment to the model	<u>40 (Note)</u> <del>100</del>
Application using <i>model rules</i> with between 1 and 6 amendments to the model	120
Application using <i>model rules</i> with between 7 and 10 amendments to the model	350
Application using <i>model rules</i> with 11 or more amendments to the model, or using free draft rules	950

Note: This fee was reduced from £100 to £40 with effect from 1 December 2003.

...



**SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS  
(AMENDMENT) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the powers listed in Schedule 4 to the Senior management arrangements, Systems and Controls sourcebook (SYSC).
- B. The rule-making powers listed in that Schedule are specified for the purpose of section 153(2) of the Financial Services and Markets Act 2000 (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 February 2004.

**Amendments to the Senior management arrangements, Systems and Controls sourcebook**

- D. SYSC is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Senior Management Arrangements, Systems and Controls (Amendment) Instrument 2003.

By Order of the Board  
18 December 2003

## Annex

### Amendments to the Senior management arrangements, Systems and Controls sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1.1 Application of SYSC 2 and SYSC 3

...

##### What?

...

1.1.5 R SYSC 2 and 3 also:

- (1) apply ~~applies~~ with respect to the carrying on of *unregulated activities* in a *prudential context*; and
- (2) take ~~takes~~ into account any activity of other members of a *group* of which the *firm* is a member.

...

#### 2.1 Apportionment of Responsibilities

...

2.1.6 G Table: Frequently asked questions about allocation of functions in SYSC 2.1.3R

	Question	Answer
...		
9	What if a <i>firm</i> does not have a <i>chief executive</i> ?	Normally, the functions must be allocated to one or more individuals selected from the <i>firm's</i> (or where applicable the <i>group's</i> ) <i>directors</i> and <i>senior managers</i> under SYSC 2.1.4R, column 3.  But if the <i>firm</i> :  (1) is a <i>body corporate</i> and a <u>member</u> <del>member</del> of a <i>group</i> ; and  (2) ...  then the functions must be allocated to that individual (together, optionally, with individuals from column 3 if appropriate) under SYSC 2.1.4R, column 2.

...		
-----	--	--

**CLIENT ASSETS SOURCEBOOK INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the powers and related provisions in the following sections of the Financial Services and Markets Act 2000 ("the Act"):
    - (a) section 138 (General rule-making power);
    - (b) section 139(1) (Miscellaneous ancillary matters);
    - (c) section 145 (Financial promotion rules);
    - (d) section 147 (Control of information rules);
    - (e) section 149 (Evidential provisions);
    - (f) section 156 (General supplementary powers);
    - (g) section 157(1) (Guidance); and
  - (2) the other rule-making powers referred to in Schedule 4 to the General provisions.
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force as set out below.
- (1) The following provisions come into force on 14 January 2005:
    - (a) CASS 1.2.5R, 1.2.7G(4) and 1.2.8G(3), as set out in Annex A; and
    - (b) part 2 of Annex R.
  - (2) The remainder of this instrument comes into force on 1 January 2004.

**Client Assets sourcebook and consequential amendments**

- D. The FSA makes the rules and gives the guidance set out in Annexes A to W to this instrument.
- E. The provisions of COB 9 are moved to the new Client Assets sourcebook (CASS) and are:

- (1) included in CASS after the provisions in Annex A, renumbered as shown in the table in Annex D; and
  - (2) amended as specified in Annex E.
- F. Other provisions in the FSA's Handbook of rules and guidance are amended in accordance with Annex F to this instrument, and the modules of the Handbook listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2):

(1)	(2)
Reader's Guide and Reader's Short Guide	Annex G
SYSC	Annex H
COB	Annex I
MAR	Annex J
AUTH	Annex K
SUP	Annex L
ENF	Annex M
CIS	Annex N
CRED	Annex O
ELM	Annex P
LLD	Annex Q
PROF	Annex R
EMPS	Annex S
FREN	Annex T
OMPS	Annex U
SERV	Annex V
Glossary	Annex W

**Citation**

- G. This instrument may be cited as the Client Assets Sourcebook Instrument 2003.
- H. Annexes A to C to this instrument together with the provisions referred to in paragraph E may be cited as the Client Assets sourcebook.

By Order of the Board  
18 December 2003

**Annex A**  
**The Client Assets sourcebook**

All the text in this Annex is new.

## **1. Application and general provisions**

### **1.1 Application and purpose**

Application

- 1.1.1 G *CASS* applies to a *firm* as specified in the remainder of this chapter.

Purpose

- 1.1.2 G The purpose of this chapter is to set out to whom, for what activities, and within what territorial limits the *rules*, *evidential provisions* and *guidance* in *CASS* apply.

### **1.2 General application: who? what?**

General application: who?

- 1.2.1 G The *rules* in *CASS* 1.2 set out the maximum scope of this sourcebook. The application of *CASS* is modified for certain activities by *CASS* 1.4. Also particular chapters or sections of *CASS* may have provisions which limit their application.
- 1.2.2 R *CASS* applies to every *firm*, except as provided for in *CASS* 1.2.3 R, with respect to the carrying on of:
- (1) all *regulated activities* except to the extent that a provision of *CASS* provides for a narrower application; and
  - (2) *unregulated activities* to the extent specified in any provision of *CASS*.
- 1.2.3 R *CASS* does not apply to:
- (1) an *ICVC*; or
  - (2) an *incoming EEA firm* other than an *insurer*, with respect to its *passport activities*; or
  - (3) a *UCITS qualifier*.
- 1.2.4 R *CASS* 2 (Custody rules), *CASS* 3 (Collateral rules) and *CASS* 4 (Client money and mandates: designated investment business) do not apply to:
- (1) an *authorised professional firm* with respect to its *non-mainstream regulated activities*; or
  - (2) the *Society*.
- 1.2.5 R *CASS* 5 (Client money and mandates: insurance mediation activity) does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, which are *insurance mediation activities*, if:

- (1) the *firm's designated professional body* has made rules which implement article 4 of the *IMD*;
- (2) those rules have been approved by the *FSA* under section 332(5) of the *Act*; and
- (3) the *firm* is subject to the rules in the form in which they were approved.

1.2.6 G Authorised professional firms should be aware of *PROF 5.2* (Nature of non-mainstream regulated activities).

General application: what?

- 1.2.7 G
- (1) The approach in *CASS* is to ensure that the *rules* in a chapter are applied to *firms* in respect of particular *regulated activities* or *unregulated activities*.
  - (2) The scope of the *regulated activities* to which *CASS* applies is determined by the description of the activity as it is set out in the *Regulated Activities Order*. Accordingly, a *firm* will not generally be subject to *CASS* in relation to any aspect of its business activities which fall within an exclusion found in the *Regulated Activities Order*. The definition of *designated investment business* includes, however, activities within the exclusion from *dealing in investments as principal* in article 15 of the *Regulated Activities Order* (Absence of holding out etc).
  - (3) *CASS 2* (Custody rules), *CASS 3* (Collateral rules) and *CASS 4* (Client money and mandates: designated investment business) apply in relation to *regulated activities*, conducted by *firms*, which fall within the definition of *designated investment business*.
  - (4) *CASS 5* (Client money and mandates: insurance mediation activity) applies in relation to *regulated activities*, conducted by *firms*, which fall within the definition of *insurance mediation activities*.

Application for private customers, intermediate customers and market counterparties

- 1.2.8 G
- (1) *CASS* applies directly in respect of activities conducted with or for *market counterparties* as well as with or for *customers*. The term *client* refers both to *market counterparties* and to *customers*.
  - (2) In *CASS 2* (Custody rules), *CASS 3* (Collateral rules) and *CASS 4* (Client money and mandates: designated investment business), the term *customer* refers to *private customers* and *intermediate customers*, but not *market counterparties*. Where relevant, each of the provisions of *CASS* makes clear whether it applies to activities carried on with or for *private customers*, *intermediate customers* or both.
  - (3) *CASS 5* (Client money and mandates: insurance mediation activity) does not generally distinguish between different categories of *client*. However, the term *retail customer* is used for those to whom additional obligations are owed, rather than the term *private customer*. This is to be consistent with the *client* categories used in relation to the obligations in *ICOB* in relation to *insurance mediation activities*.

- 1.2.9 G *Firms* are reminded that the definition of *inter-professional business* does not include *safekeeping and administration of assets* or *agreeing to carry on that activity*: *CASS* will apply in this context (and will apply to the holding of *money* for *clients* in connection with *inter-professional business*).

### 1.3 General application: where?

- 1.3.1 G The *rules* in *CASS* 1.3 set out the maximum territorial scope of this sourcebook. Particular *rules* may have express territorial limitations.

UK establishments: general

- 1.3.2 R Except as provided for in *CASS* 1.2.3R(2), *CASS* applies to every *firm*, in relation to *regulated activities* carried on by it from an *establishment* in the *United Kingdom*.

UK firms: passported activities from EEA branches

- 1.3.3 R *CASS* applies to every *UK firm*, other than an *insurer*, in relation to *passported activities* carried on by it from a *branch* in another *EEA State*.

### 1.4 Application: particular activities

Occupational pension scheme firms (OPS firms)

- 1.4.1 R In the case of *OPS activity* undertaken by an *OPS firm*, *CASS* applies with the following general modifications:
- (1) references to *customer* are to the *OPS* or *welfare trust*, whichever fits the case, in respect of which the *OPS firm* is acting or intends to act, and with or for the benefit of which the relevant activity is to be carried on; and
  - (2) if an *OPS firm* is required by any *rule* in *CASS* to provide information to, or obtain consent from, a *customer*, that *firm* must ensure that the information is provided to, or consent obtained from, each of the trustees of the *OPS* or *welfare trust* in respect of which that *firm* is acting, unless the context requires otherwise.

Stock lending activity with or for customers

- 1.4.2 G *CASS* 2 (Custody rules) to *CASS* 4 (Client money and mandates: designated investment business) apply in respect of any *stock lending activity* undertaken with or for a *customer* by a *firm*.

Corporate finance business

- 1.4.3 G *CASS* 2 (Custody rules) to *CASS* 4 (Client money and mandates: designated investment business) apply in respect of *corporate finance business* undertaken by a *firm*.



#### Oil market activity and energy market activity

- 1.4.4 G *CASS* 2 (Custody rules) to *CASS* 4 (Client money and mandates: designated investment business) apply in respect of *oil market activity* and other *energy market activity* undertaken by a *firm*.

#### Appointed representatives

- 1.4.5 G (1) Although *CASS* does not apply directly to a *firm's appointed representatives*, a *firm* will always be responsible for the acts and omissions of its *appointed representatives* in carrying on business for which the *firm* has accepted responsibility (section 39(3) of the *Act*). In determining whether a *firm* has complied with any provision of *CASS*, anything done or omitted by a *firm's appointed representative* (when acting as such) will be treated as having been done or omitted by the *firm* (section 39(4) of the *Act*).
- (2) *Firms* should also refer to *SUP* 12 (Appointed representatives), which sets out requirements which apply to *firms* using *appointed representatives*.

#### Depositaries

- 1.4.6 R *CASS* 4.1 to 4.4 do not apply to a *depositary* when acting as such.
- 1.4.7 R The remainder of *CASS* applies to a *depositary*, when acting as such, with the following general modifications:
- (1) except in *CASS* 4.5 (Mandates), '*client*' means '*trustee*', '*trust*' or '*collective investment scheme*' as appropriate; and
  - (2) in *CASS* 4.5, '*client*' means '*trustee*', '*collective investment scheme*' or '*collective investment scheme instrument*' as appropriate.
- 1.4.8 R In relation to a *trustee firm* which is not a *depositary*, when acting as such, and which falls within *COB* 11.5.1R(1):
- (1) *CASS* does not apply, except *CASS* 4.5 (Mandates); and
  - (2) in *CASS* 4.5, '*Client*' means '*trustee*', '*trust*' or '*trust instrument*' as appropriate.

## 1.5 Application: electronic media and e-commerce

#### Application to electronic media

- 1.5.1 G *GEN* 2.2.14 R (References to writing) has the effect that electronic media may be used to make communications that are required by the *Handbook* to be "in writing" unless a contrary intention appears.
- 1.5.2 G For any electronic communication with a *customer*, a *firm* should:

- (1) have in place appropriate arrangements, including contingency plans, to ensure the secure transmission and receipt of the communication; it should also be able to verify the authenticity and integrity of the communication; the arrangements should be proportionate and take into account the different levels of risk in a *firm's* business;
- (2) be able to demonstrate that the *customer* wishes to communicate using this form of media; and
- (3) if entering into an agreement, make it clear to the *customer* that a contractual relationship is created that has legal consequences.

1.5.3 G *Firms* should note that *GEN 2.2.14R* does not affect any other legal requirement that may apply in relation to the form or manner of executing a *document* or agreement.

Modification of CASS resulting from the E-Commerce Directive

1.5.4 G The application of *CASS* may be modified by *ECO* (as a result of the *E-Commerce Directive* implementation). These modifications will only apply to a *firm* which carries on *electronic commerce activity*. *Firms* should consult *ECO* for details.

**Annex B**  
**Schedules to CASS**

All the text in this Annex is new and is to be inserted as the schedules to CASS.

**Client Assets**  
**Schedule 1**  
**Record keeping requirements**

G

- 1 The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant record keeping requirements.
- 2 It is not a complete statement of those requirements and should not be relied on as if it were.
- 3 Table

<b>Handbook reference</b>	<b>Subject of record</b>	<b>Contents of record</b>	<b>When record must be made</b>	<b>Retention period</b>
<i>CASS</i> 2.1.9R	A personal investment firm that temporarily holds a client's designated investments	Client details and any actions taken by the firm		3 years (from the making of the record)
<i>CASS</i> 2.3.6R(1)(c)	Safe custody: arrangements for clients ordinarily outside the United Kingdom	The steps taken and result under <i>CASS</i> 2.3.6R(1)(c)	On determination that client does not wish to execute agreement	3 years
<i>CASS</i> 2.6.15R	Client custody assets held or received by or on behalf of a client or which the firm has arranged for another to hold or receive	Full details	On receipt	3 years
<i>CASS</i> 2.6.16R	Safe custody investments used for stock lending activities	The identity of safe custody investments available to be lent, and those	On receipt	3 years

		which have been lent		
<i>CASS</i> 4.3.111R	Client money	Sufficient records to show and explain firm's transactions and commitments	Maintain current full details	3 years (after records made)
<i>CASS</i> 4.4.24R(3)	Client money shortfall	Each client's entitlement to client money shortfall at the failed bank	Maintain up to date records	Until client repaid
<i>CASS</i> 4.4.25R(3)	Client money shortfall	Each client's entitlement to client money shortfall at the failed intermediate broker, settlement agent or OTC counterparty	Maintain up to date records	Until client repaid
<i>CASS</i> 4.4.31R(3)	Client money shortfall	Each client's entitlement to client money shortfall at the failed intermediate broker, settlement agent or OTC counterparty	Maintain up to date records	Until client repaid
<i>CASS</i> 4.5.5R	Adequate records and internal controls in respect of the firm's use of mandates (see <i>CASS</i> 4.5.5R(1) to (4))	Up to date list of firm's authorities, all transactions entered into, important client documents held by the firm	Maintain current full details	

**Client Assets**  
**Schedule 2**  
**Notification requirements**

G

1 Table

<b>Handbook reference</b>	<b>Matter to be notified</b>	<b>Contents of notification</b>	<b>Trigger event</b>	<b>Time allowed</b>
<i>CASS</i> 2.6.14R(1)	Non-compliance with reconciliation requirements in <i>CASS</i> 2.6.2R, 2.6.4R, 2.6.6R, 2.6.8R, 2.6.10R	Reason for non-compliance	Non-compliance	Immediately
<i>CASS</i> 2.6.14R(2)	Non-compliance of reconciliation requirements in <i>CASS</i> 2.6.11R	Reason for non-compliance once reconciliation carried out	Non-compliance	Immediately
<i>CASS</i> 4.3.64R	Failure of a third party with which money is held (ie. bank, intermediate broker, settlement agent or OTC counterparty or other entity with which it has placed or to which it has passed client money)	Full details	When firm becomes aware of the failure of the entity	Immediately
<i>CASS</i> 4.3.64R	Failure of a third party with which money is held (ie. bank, intermediate broker, settlement agent or OTC counterparty or other entity with which it has placed or to which it has passed client money)	Intentions regarding making good any shortfall that has arisen or may arise, and of the amounts involved	Failure of third party with which money is held	As soon as reasonably practical
<i>CASS</i> 4.3.87R	Daily calculation required by <i>CASS</i> 4.3.66R or <i>CASS</i>	Inability to perform daily calculation	Inability to perform daily calculation	Immediately

	4.3.67R			
<i>CASS 4.3.88R</i>	Daily calculation required by <i>CASS 4.3.66R</i> or <i>CASS 4.3.67R</i>	Inability to make good any shortfall identified by daily calculation	Inability to make good any shortfall identified by close of business on the day of calculation	Immediately
<i>CASS 4.3.97R</i>	Requirements detailed in <i>CASS 4.3.89R</i> , <i>CASS 4.3.91R</i> , <i>CASS 4.3.92R</i> , <i>CASS 4.3.94R</i> and <i>CASS 4.3.95R</i> .	Inability to comply with any of the requirements	Inability to comply with any of the requirements	As soon as possible
<i>CASS 4.3.110R</i>	LME bond arrangements	Issue of an individual letter of credit issued by the firm	Upon issue of an individual letter of credit under an LME bond arrangement	Immediately
<i>CASS 4.4.33R</i> (see <i>CASS 4.3.64R</i> )	Failure of a third party with which money is held (ie. bank, intermediate broker, settlement agent or OTC counterparty or other entity with which it has placed or to which it has passed client money)	Full details	When the firm becomes aware of the failure of the entity	Immediately
<i>CASS 4.4.33R</i> (see <i>CASS 4.3.64R</i> )	Failure of a third party with which money is held (ie. bank, intermediate broker, settlement agent or OTC counterparty)	Intentions regarding making good any shortfall that has arisen or may arise, and of the amounts involved	Upon first delegation of regulated activity	As soon as reasonably practicable

**Client Assets**  
**Schedule 3**  
**Fees and other required payments**

G

- 1 There are no requirements for fees or other payments in *CASS*.

**Client Assets**  
**Schedule 4**  
**Powers exercised**

G

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *CASS*:

- 1 Section 138 (General rule-making power)
- 2 Section 139(1) (Miscellaneous ancillary matters)
- 3 Section 149 (Evidential provisions)
- 4 Section 156 (General supplementary powers)

The following powers in the *Act* have been exercised by the *FSA* to give the *guidance* in *CASS*:

- 5 Section 157(1) (Guidance)



**Client Assets**  
**Schedule 5**  
**Rights of actions for damages**

G

1. The table below sets out the *rules* in *CASS* contravention of which by an *authorised person* may be actionable under section 150 of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.
2. If a ‘Yes’ appears in the column headed ‘For private person?’, the *rule* may be actionable by a ‘private person’ under section 150 (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001 No 2256)). A ‘Yes’ in the column headed ‘Removed’ indicates that the *FSA* has removed the right of action under section 150(2) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.
3. The column headed ‘For other person?’ indicates whether the *rule* may be actionable by a *person* other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* may be actionable is given.

Table

Chapter/ Appendix	Section / Annex	Paragraph	Right of action under section 150			
			For private person?	Removed?	For other person?	
All <i>rules</i> in <i>CASS</i> with the status letter “E”			No	No	No	
All other <i>rules</i> in <i>CASS</i> .			Yes	No	No	

**Client Assets**  
**Schedule 6**  
**Rules that can be waived**

G

1. The rules in *CASS* can be waived by the FSA under section 148 of the *Act* (Modification or waiver of rules).

**Annex C**  
**CASS Transitional Provisions**

All the text in this Annex is new.

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	<i>CASS 2 to CASS 4</i>	R	<i>COB TR 1 to COB TR 4</i> apply to provisions in <i>CASS</i> in the same way as they did to the equivalent provisions included in <i>COB 9</i> before 1 January 2004.	Indefinite	1 January 2004
2	Every rule in the <i>Handbook</i>	R	If a <i>firm</i> or its auditors make reference to a provision in <i>COB 9</i> in a document, record, report or return, the <i>FSA</i> will take this as a reference to the equivalent provision in <i>CASS 2 to CASS 4</i> .	1 January 2004 for 12 months	1 January 2004
		G	As a result of 2, <i>firms</i> will not have to replace their <i>terms of business</i> or <i>client agreements</i> immediately on the introduction of <i>CASS</i> .		
		G	If a <i>waiver</i> granted before 1 January 2004 refers to a provision in <i>COB 9</i> it will continue to be effective in relation to the equivalent provision in <i>CASS</i> .		

## Annex D

### (Destination of COB 9 provisions)

Provision in <i>COB</i>	Description	Corresponding provision in <i>CASS</i>
9.1	Custody rules	2
9.1.1 R	Application	2.1.1 R
9.1.2 G	Application	2.1.2 G
9.1.3 R	Application	2.1.3 R
9.1.4 G	Application	2.1.4 G
9.1.5 G	Application	2.1.5 G
9.1.6 G	Application	2.1.6 G
9.1.7 G	Application	2.1.7 G
9.1.8 G	Application	2.1.8 G
9.1.9 R	Application	2.1.9 R
9.1.10 G	Application	2.1.10 G
9.1.11 R	Application	2.1.11 R
9.1.12 G	General Purpose	2.1.12 G
9.1.13 R	Delivery versus payment transactions	2.1.13 R
9.1.14 R	Delivery versus payment transactions	2.1.14 R
9.1.15 G	Modification of scope	2.1.15 G
9.1.16 R	Trustees and depositaries	2.1.16 R
9.1.17 G	Trustees and depositaries	2.1.17 G
9.1.18 R	Trustees and depositaries	2.1.18 R
9.1.19 R	Trustees and depositaries	2.1.19 R
9.1.20 G	Trustees and depositaries	2.1.20 G
9.1.21 R	Arrangers	2.1.21 R
9.1.22 R	Arrangers	2.1.22 R
9.1.23 G	Depositary receipt business	2.1.23 G
9.1.24 R	Depositary receipt business	2.1.24 R
9.1.25 R	Depositary receipt business	2.1.25 R
9.1.26 R	Depositary receipt business	2.1.26 R
9.1.27 G	Segregation: purpose	2.2.2 G

9.1.28	R	General	2.2.3	R
9.1.29	G	General	2.2.4	G
9.1.30	R	General	2.2.5	R
9.1.31	G	General	2.2.6	G
9.1.32	R	General	2.2.7	R
9.1.33	R	Affiliated companies	2.2.8	R
9.1.34	G	Registration and recording: purpose	2.2.9	G
9.1.35	R	Registration and recording: purpose	2.2.10	R
9.1.36	G	Registration and recording: purpose	2.2.11	G
9.1.37	G	Registration and recording: purpose	2.2.12	G
9.1.38	R	Registration and recording: purpose	2.2.13	R
9.1.39	G	Holding: purpose	2.2.14	G
9.1.40	R	Holding: purpose	2.2.15	R
9.1.41	G	Holding: purpose	2.2.16	G
9.1.42	R	Holding: purpose	2.2.17	R
9.1.43	R	Assessment of a custodian	2.2.18	R
9.1.44	R	Assessment of a custodian	2.2.19	R
9.1.45	G	Assessment of a custodian	2.2.20	G
9.1.46	G	Assessment of a custodian	2.2.21	G
9.1.47	G	Assessment of a custodian	2.2.22	G
9.1.48	R	Assessment of a custodian	2.2.23	R
9.1.49	R	Client agreement	2.3.2	R
9.1.50	G	Client agreement	2.3.3	G
9.1.51	R	Client agreement	2.3.4	R
9.1.52	R	Client agreement	2.3.5	R
9.1.53	R	Client agreement	2.3.6	R
9.1.54	R	Risk disclosures	2.3.7	R
9.1.55	G	Risk disclosures	2.3.8	G
9.1.56	G	Risk disclosures	2.3.9	G
9.1.57	R	Risk disclosures	2.3.10	R
9.1.58	R	Risk disclosures	2.3.11	R
9.1.59	R	Production and despatch of client statements	2.3.12	R
9.1.60	R	Production and despatch of client statements	2.3.13	R

9.1.61	R	Production and despatch of client statements	2.3.14	R
9.1.62	G	Production and despatch of client statements	2.3.15	G
9.1.63	R	Production and despatch of client statements	2.3.16	R
9.1.64	R	Content of client statements	2.3.17	R
9.1.65	R	Content of client statements	2.3.18	R
9.1.66	R	Content of client statements	2.3.19	R
9.1.67	G	Content of client statements	2.3.20	G
9.1.68	R	Content of client statements	2.3.21	R
9.1.69	R	Custodian agreement	2.4.2	R
9.1.70	G	Custodian agreement	2.4.3	G
9.1.71	G	Custodian agreement	2.4.4	G
9.1.72	R	Use of a safe custody investment: by the firm	2.5.2	R
9.1.73	R	Use of a safe custody investment: by another client	2.5.3	R
9.1.74	R	Stock lending	2.5.4	R
9.1.75	E	Stock lending	2.5.5	E
9.1.76	G	Stock lending	2.5.6	G
9.1.77	G	Stock lending	2.5.7	G
9.1.78	R	Stock lending	2.5.8	R
9.1.79	R	Stock lending	2.5.9	R
9.1.80	R	Stock lending	2.5.10	R
9.1.81	G	Stock lending	2.5.11	G
9.1.82	G	Stock lending	2.5.12	G
9.1.83	G	Stock lending	2.5.13	G
9.1.84	G	Stock lending	2.5.14	G
9.1.85	R	Reconciliation: frequency of reconciliation	2.6.2	R
9.1.86	G	Reconciliation: frequency of reconciliation	2.6.3	G
9.1.87	R	Reconciliation: frequency of reconciliation	2.6.4	R
9.1.88	G	Reconciliation: frequency of reconciliation	2.6.5	G
9.1.89	R	Reconciliation: frequency of reconciliation	2.6.6	R
9.1.90	G	Reconciliation: frequency of reconciliation	2.6.7	G
9.1.91	R	Reconciliation: frequency of reconciliation	2.6.8	R
9.1.92	G	Reconciliation: frequency of reconciliation	2.6.9	G
9.1.93	R	Reconciliation methods	2.6.10	R

9.1.94	R	Reconciliation discrepancies	2.6.11	R
9.1.95	G	Reconciliation discrepancies	2.6.12	G
9.1.96	G	Reconciliation discrepancies	2.6.13	G
9.1.97	R	Notification requirement	2.6.14	R
9.1.98	R	Records	2.6.15	R
9.1.99	R	Records	2.6.16	R
9.2		Mandate rules	4.5	
9.2.1	R	Application	4.5.1	R
9.2.2	G	Application	4.5.2	G
9.2.3	G	Application	4.5.3	G
9.2.4	G	Purpose	4.5.4	G
9.2.5	R	General	4.5.5	R
9.3		Client money rules	4.1 to 4.3	
9.3.1	R	Application	4.1.1	R
9.3.2	R	Application	4.1.2	R
9.3.3	G	Application	4.1.3	G
9.3.4	G	Application	4.1.4	G
9.3.5	G	Application	4.1.5	G
9.3.6	G	Application	4.1.6	G
9.3.7	G	General purpose	4.1.7	G
9.3.8	G	Money that is not client money: 'opt outs' for any business (including ISD business)	4.1.8	G
9.3.9	R	Money that is not client money: 'opt outs' for any business (including ISD business)	4.1.9	R
9.3.10	G	Opt outs' for non ISD business	4.1.10	G
9.3.11	R	Opt outs' for non ISD business	4.1.11	R
9.3.12	G	Opt outs' for non ISD business	4.1.12	G
9.3.13	R	Opt outs' for non ISD business	4.1.13	R
9.3.14	G	Opt outs' for non ISD business	4.1.14	G
9.3.15	R	Money in connection with a 'delivery versus payment' transaction	4.1.15	R
9.3.16	R	Money in connection with a 'delivery versus payment' transaction	4.1.16	R
9.3.17	G	Affiliated companies	4.1.17	G
9.3.18	R	Affiliated companies	4.1.18	R

9.3.19	R	Money due and payable to the firm	4.1.19	R
9.3.20	E	Money due and payable to the firm	4.1.20	E
9.3.21	G	Money due and payable to the firm	4.1.21	G
9.3.22	G	Money due and payable to the firm	4.1.22	G
9.3.23	G	Money due and payable to the firm	4.1.23	G
9.3.24	G	Money due and payable to the firm	4.1.24	G
9.3.25	R	Solicitors	4.1.25	R
9.3.26	R	Solicitors	4.1.26	R
9.3.27	R	Trustee firms (other than trustees of unit trust schemes)	4.1.27	R
9.3.28	R	Trustee firms (other than trustees of unit trust schemes)	4.1.28	R
9.3.29	R	Trustee firms (other than trustees of unit trust schemes)	4.1.29	R
9.3.30	G	Statutory trust	4.2.2	G
9.3.31	R	Requirement	4.2.3	R
9.3.32	G	Requirement	4.2.4	G
9.3.33	G	Requirement	4.2.5	G
9.3.34	R	Requirement	4.2.6	R
9.3.35	G	Requirement	4.2.7	G
9.3.36	G	Segregation	4.3.2	G
9.3.37	R	Segregation	4.3.3	R
9.3.38	R	Segregation	4.3.4	R
9.3.39	R	Segregation	4.3.5	R
9.3.40	R	Segregation	4.3.6	R
9.3.41	G	Segregation	4.3.7	G
9.3.42	R	Payment of client money into a client bank account	4.3.8	R
9.3.43	G	Payment of client money into a client bank account	4.3.9	G
9.3.44	R	Payment of client money into a client bank account	4.3.10	R
9.3.45	R	Payment of client money into a client bank account	4.3.11	R
9.3.46	R	Payment of client money into a client bank account	4.3.12	R



9.3.47	R	Mixed remittance	4.3.13	R
9.3.48	G	Mixed remittance	4.3.14	G
9.3.49	R	Appointed representatives, field representatives and other agents	4.3.15	R
9.3.50	G	Appointed representatives, field representatives and other agents	4.3.16	G
9.3.51	R	Appointed representatives, field representatives and other agents	4.3.17	R
9.3.52	G	Appointed representatives, field representatives and other agents	4.3.18	G
9.3.53	R	Client entitlements	4.3.19	R
9.3.54	G	Client entitlements	4.3.20	G
9.3.55	R	Client entitlements	4.3.21	R
9.3.56	R	Client entitlements	4.3.22	R
9.3.57	E	Client entitlements	4.3.23	E
9.3.58	R	Money due to a client from a firm	4.3.24	R
9.3.59	G	Money due to a client from a firm	4.3.25	G
9.3.60	R	Interest	4.3.26	R
9.3.61	G	Interest	4.3.27	G
9.3.62	G	Interest	4.3.28	G
9.3.63	G	Transfer of client money to a third party	4.3.29	G
9.3.64	R	Transfer of client money to a third party	4.3.30	R
9.3.65	G	Transfer of client money to a third party	4.3.31	G
9.3.66	G	Transfer of client money to a third party	4.3.32	G
9.3.67	G	Client bank accounts	4.3.33	G
9.3.68	R	Client bank accounts	4.3.34	R
9.3.69	R	Client bank accounts	4.3.35	R
9.3.70	R	Client bank accounts	4.3.36	R
9.3.71	G	Client bank accounts	4.3.37	G
9.3.72	G	Client bank accounts	4.3.38	G
9.3.73	G	Client bank accounts	4.3.39	G
9.3.74	R	Client bank accounts	4.3.40	R
9.3.75	G	A firm's selection of a bank	4.3.41	G
9.3.76	R	A firm's selection of a bank	4.3.42	R
9.3.77	G	A firm's selection of a bank	4.3.43	G

9.3.78	G	A firm's selection of a bank	4.3.44	G
9.3.79	G	A firm's selection of a bank	4.3.45	G
9.3.80	R	Group banks	4.3.46	R
9.3.81	R	Group banks	4.3.47	R
9.3.82	R	Notification and acknowledgement of trust (banks)	4.3.48	R
9.3.83	R	Notification and acknowledgement of trust (banks)	4.3.49	R
9.3.84	R	Notification and acknowledgement of trust (banks)	4.3.50	R
9.3.85	G	Notification and acknowledgement of trust (banks)	4.3.51	G
9.3.86	R	Notification and acknowledgement of trust (exchange, clearing house, intermediate broker or OTC counterparty)	4.3.52	R
9.3.87	R	Notification and acknowledgement of trust (exchange, clearing house, intermediate broker or OTC counterparty)	4.3.53	R
9.3.88	G	Notification and acknowledgement of trust (exchange, clearing house, intermediate broker or OTC counterparty)	4.3.54	G
9.3.89	R	Notification and acknowledgement of trust (exchange, clearing house, intermediate broker or OTC counterparty)	4.3.55	R
9.3.90	R	Notification to clients: use of an approved bank outside the United Kingdom	4.3.56	R
9.3.91	G	Notification to clients: use of an approved bank outside the United Kingdom	4.3.57	G
9.3.92	G	Notification to clients: use of an approved bank outside the United Kingdom	4.3.58	G
9.3.93	R	Notification to clients: use of an approved bank outside the United Kingdom	4.3.59	R
9.3.94	G	Notification to clients: use of an approved bank outside the United Kingdom	4.3.60	G
9.3.95	R	Notification to clients: use of an intermediate broker, settlement agent or OTC counterparty outside the United Kingdom	4.3.61	R
9.3.96	G	Notification to clients: use of an intermediate broker, settlement agent or OTC counterparty outside the United Kingdom	4.3.62	G

9.3.97	R	Notification to clients: use of an intermediate broker, settlement agent or OTC counterparty outside the United Kingdom	4.3.63	R
9.3.98	R	Notification to the FSA: failure of a bank, intermediate broker, settlement agent or OTC counterparty outside the United Kingdom	4.3.64	R
9.3.99	G	Client money calculation	4.3.65	G
9.3.100	R	Client money calculation	4.3.66	R
9.3.101	R	Client money calculation	4.3.67	R
9.3.102	G	Client money calculation	4.3.68	G
9.3.103	G	Client money calculation	4.3.69	G
9.3.104	G	Client money calculation	4.3.70	G
9.3.105	R	Client money requirement	4.3.71	R
9.3.106	R	General transactions	4.3.72	R
9.3.107	R	General transactions	4.3.73	R
9.3.108	R	General transactions	4.3.74	R
9.3.109	R	General transactions	4.3.75	R
9.3.110	G	General transactions	4.3.76	G
9.3.111	G	General transactions	4.3.77	G
9.3.112	G	General transactions	4.3.78	G
9.3.113	R	Equity balance	4.3.79	R
9.3.114	R	Equity balance	4.3.80	R
9.3.115	R	Margined transaction requirement	4.3.81	R
9.3.116	G	Margined transaction requirement	4.3.82	G
9.3.117	G	Margined transaction requirement	4.3.83	G
9.3.118	G	Margined transaction requirement	4.3.84	G
9.3.119	R	Reduced client money requirement option	4.3.85	R
9.3.120	G	Reduced client money requirement option	4.3.86	G
9.3.121	R	Failure to perform calculations	4.3.87	R
9.3.122	R	Failure to perform calculations	4.3.88	R
9.3.123	R	Reconciliation of client money balances: frequency of reconciliation	4.3.89	R
9.3.124	G	Reconciliation of client money balances: frequency of reconciliation	4.3.90	G
9.3.125	R	Reconciliation of client money balances: frequency of reconciliation	4.3.91	R

9.3.126	R	Reconciliation method	4.3.92	R
9.3.127	R	Reconciliation method	4.3.93	R
9.3.128	R	Reconciliation discrepancies	4.3.94	R
9.3.129	R	Reconciliation discrepancies	4.3.95	R
9.3.130	G	Reconciliation discrepancies	4.3.96	G
9.3.131	R	Reconciliation discrepancies	4.3.97	R
9.3.132	G	Discharge of fiduciary duty	4.3.98	G
9.3.133	R	Discharge of fiduciary duty	4.3.99	R
9.3.134	G	Discharge of fiduciary duty	4.3.100	G
9.3.135	R	Discharge of fiduciary duty	4.3.101	R
9.3.136	R	Discharge of fiduciary duty	4.3.102	R
9.3.137	G	Allocated but unclaimed client money	4.3.103	G
9.3.138	R	Allocated but unclaimed client money	4.3.104	R
9.3.139	E	Allocated but unclaimed client money	4.3.105	E
9.3.140	G	Allocated but unclaimed client money	4.3.106	G
9.3.141	R	CFTC part 30 exemption order	4.3.107	R
9.3.142	R	CFTC part 30 exemption order	4.3.108	R
9.3.143	R	CFTC part 30 exemption order	4.3.109	R
9.3.144	R	CFTC part 30 exemption order	4.3.110	R
9.3.145	R	Records	4.3.111	R
9.4		Collateral rules	3	
9.4.1	R	Application	3.1.1	R
9.4.2	G	Application	3.1.2	G
9.4.3	R	Application	3.1.3	R
9.4.4	G	Application	3.1.4	G
9.4.5	G	Purpose	3.1.5	G
9.4.6	G	Purpose	3.1.6	G
9.4.7	G	Purpose	3.1.7	G
9.4.8	R	Requirements	3.2.2	R
9.4.9	G	Requirements	3.2.3	G
9.4.10	G	Requirements	3.2.4	G
9.5		Client money distribution rules	4.4	
9.5.1	R	Application	4.4.1	R

9.5.2	G	Application	4.4.2	G
9.5.3	G	Purpose	4.4.3	G
9.5.4	G	Failure of the authorised firm: primary pooling event	4.4.4	G
9.5.5	R	Failure of the authorised firm: primary pooling event	4.4.5	R
9.5.6	R	Failure of the authorised firm: primary pooling event	4.4.6	R
9.5.7	R	Pooling and distribution	4.4.7	R
9.5.8	G	Pooling and distribution	4.4.8	G
9.5.9	R	Client money received after the failure of the firm	4.4.9	R
9.5.10	G	Client money received after the failure of the firm	4.4.10	G
9.5.11	R	Client money received after the failure of the firm	4.4.11	R
9.5.12	G	Client money received after the failure of the firm	4.4.12	G
9.5.13	R	Failure of a bank, intermediate broker, settlement agent or OTC counterparty: secondary pooling events	4.4.13	R
9.5.14	R	Failure of a bank, intermediate broker, settlement agent or OTC counterparty: secondary pooling events	4.4.14	R
9.5.15	R	Failure of a bank, intermediate broker, settlement agent or OTC counterparty: secondary pooling events	4.4.15	R
9.5.16	G	Failure of a bank, intermediate broker, settlement agent or OTC counterparty: secondary pooling events	4.4.16	G
9.5.17	G	Failure of a bank, intermediate broker, settlement agent or OTC counterparty: secondary pooling events	4.4.17	G
9.5.18	G	Failure of a bank	4.4.18	G
9.5.19	G	Failure of a bank	4.4.19	G
9.5.20	R	Failure of a bank: pooling	4.4.20	R
9.5.21	R	Failure of a bank: pooling	4.4.21	R
9.5.22	R	Failure of a bank: pooling	4.4.22	R
9.5.23	G	Failure of a bank: pooling	4.4.23	G

9.5.24	R	Failure of a bank: pooling	4.4.24	R
9.5.25	R	Failure of a bank: pooling	4.4.25	R
9.5.26	R	Failure of a bank: pooling	4.4.26	R
9.5.27	R	Client money received after the failure of a bank	4.4.27	R
9.5.28	R	Client money received after the failure of a bank	4.4.28	R
9.5.29	G	Client money received after the failure of a bank	4.4.29	G
9.5.30	R	Failure of an intermediate broker, settlement agent or OTC counterparty: pooling	4.4.30	R
9.5.31	R	Failure of an intermediate broker, settlement agent or OTC counterparty: pooling	4.4.31	R
9.5.32	R	Client money received after the failure of an intermediate broker, settlement agent or OTC counterparty	4.4.32	R
9.5.33	R	Notification on the failure of a bank, intermediate broker, settlement agent or OTC counterparty	4.4.33	R

## Annex E

### **Amendments to Client Assets sourcebook as created by paragraphs D and E(1) of this instrument**

All text in this Annex is new and the place where it goes is indicated and it is not underlined.

In *CASS 2* to *CASS 4*, references to provisions in the left hand column of the table in Annex D are replaced with references to the corresponding provisions in the right hand column of that table.

Before *CASS 2.1.1* insert

#### 2.1 Application and purpose

Before *CASS 2.2.2* insert

#### 2.2 Segregation, registration and recording, and holding Application

##### 2.2.1 R *CASS 2.2* applies in accordance with *CASS 2.1*

Before *CASS 2.3.2* insert

#### 2.3 Client agreement and client statements Application

##### 2.3.1 R *CASS 2.3* applies in accordance with *CASS 2.1*

Before *CASS 2.4.2* insert

#### 2.4 Custodian agreement Application

##### 2.4.1 R *CASS 2.4* applies in accordance with *CASS 2.1*

Before *CASS 2.5.2* insert

#### 2.5 Use of a safe custody investment and stock lending Application

##### 2.5.1 R *CASS 2.5* applies in accordance with *CASS 2.1*

Before *CASS 2.6.2* insert

2.6            Operation

                 Application

2.6.1        R    *CASS 2.6* applies in accordance with *CASS 2.1*

Before *CASS 3.2.2* insert

3.2            Requirements

                 Application

3.2.1        R    *CASS 3.2* applies in accordance with *CASS 3.1*

At the beginning of *CASS 4* insert

4              Client money and mandates: designated investment business

Before *CASS 4.2.2* insert

4.2            Statutory trust

                 Application

4.2.1        R    *CASS 4.2* applies in accordance with *CASS 4.1*

Before *CASS 4.3.2* insert

4.3            Segregation and operation of client money accounts

                 Application

4.3.1        R    *CASS 4.3* applies in accordance with *CASS 4.1*



## Annex F

### **General amendments to the Handbook consequential on the creation of *CASS***

1. References in the *Handbook* (other than those mentioned specifically elsewhere in this instrument) to provisions in the left hand column of the table in Annex D are replaced with references to the corresponding provisions in the right hand column of that table.
2. References in the *Handbook* (other than those mentioned specifically elsewhere in this instrument) to "*COB 9*" are replaced with references to "*CASS*".

## Annex G

In this Annex, underlining indicates new text. Text in square brackets indicates text made<sup>1</sup> but not yet in force.

### Amendments to the Reader's Guide

#### Contents of the Handbook

	Sourcebook or manual	Reference code
...	...	...
<b>Business standards</b>	...	...
	Conduct of Business	COB
	[Mortgages: Conduct of Business]	[MCOB]
	<u>Client Assets</u>	<u>CASS</u>
	...	...

### Amendments to the Reader's Short Guide

#### Contents of the Handbook

	Sourcebook or manual	Reference code
...	...	...
<b>Business standards</b>	...	...
	Conduct of Business	COB
	[Mortgages: Conduct of Business]	[MCOB]
	<u>Client Assets</u>	<u>CASS</u>
	...	...

<sup>1</sup> The text was made in the Mortgages: Conduct of Business (Consequential Amendments to the Handbook) Instrument 2003

## Annex H

### Amendments to the Senior Management Arrangements, Systems and Controls sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 3.2.8 R (1) ...
- (2) In SYSC 3.2.8R(1) “compliance” means compliance with the *rules* in:
- (a) *COB* (Conduct of Business); ~~and~~
  - (b) *CIS* (*Collective Investment Schemes*); and
  - (c) *CASS* (Client Assets).

...

#### Appendix 1.1

#### Matters reserved to a Home State regulator (see SYSC 1.1.1R(1)(b) and SYSC 1.1.1R(1)(c))

...

- 1.1.8 G Examples of how the *FSA* considers that SYSC 3 will apply in practice to an *incoming EEA firm* (see SYSC 1.1.4G) are as follows:
- (1) ...
- (2) The Conduct of Business sourcebook applies to an *incoming EEA firm*; ~~except that COB 9 (Client asset rules) does not apply with respect to passported activities.~~ Similarly, SYSC 3 require such a *firm*:
- (a) ...

...

## Annex I

### Amendments to the Conduct of Business sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 1.2.1 R *COB* applies to every *firm*, except that:
- (1) ~~*COB 9* (Client assets) does not apply to an *incoming EEA firm* other than an *insurer*, with respect to its *passport*ed activities;~~[deleted]
  - (2) ...
- ...
- 1.3.3 G (1) ...
- (2) ~~*COB 9* (Client assets) also applies directly in respect of activities conducted with or for *market counterparties* as well as with or for *customers*. The term *client* is used in that chapter to refer both to *market counterparties* and to *customers*.~~[deleted]
- ...
- 1.3.5 G *Firms* are reminded that the definition of *inter-professional business* does not include:
- (1) ...
  - (2) ~~*Safekeeping and administration of assets and agreeing to carry on that activity*—*COB 9* (Clients assets) will apply in this context (and will apply to the holding of *money* for *clients* in connection with *inter-professional business*);~~[deleted]
  - (3) ...
- ...
- ~~UK firms: custody services from EEA branches~~
- 1.4.9 R ~~In addition to the situations in *COB 1.4.2R* and *COB 1.4.4R*, *COB 9* (Client assets) applies to all *UK firms*, other than *insurers*, in relation to *passport*ed activities carried on by it from a *branch* in another *EEA State*.~~[deleted]
- ...
- 1.6.2 R Table: Stock lending activity.  
This table belongs to *COB 1.6.1 R*.

<b>COB</b>	<b>Subject</b>
...	...
<del>Chapter 9</del>	<del>Client assets</del>

...

- 1.6.4 R Table: Corporate finance business.  
This table belongs to *COB* 1.6.3 R.

<b>COB</b>	<b>Subject</b>
...	...
<del>Chapter 9</del>	<del>Client assets</del>

...

- 1.6.7 R Table: Provisions applied to oil market activity and energy market activity.  
This table belongs to *COB* 1.6.6 R.

<b>COB</b>	<b>Subject</b>
...	...
<del>Chapter 9</del>	<del>Client assets</del>

...

- 1.6.9 R Table: Oil market activity and energy market activity: provisions applied to certain dealings with or through authorised persons etc.  
This table belongs to *COB* 1.6.8 R.

<b>COB</b>	<b>Subject</b>
...	...
<del>Chapter 9</del>	<del>Client assets</del>

...

- 2.3.6 R (1) Any information which a *rule* in *COB* or in *CASS* requires to be sent to a *customer* may be sent to another *person* on the instruction of the *customer*, so long as the recipient is not connected with the *firm*.  
(2) ...

...

2.4.6 R When any of the *COB rules* or any of the *CASS rules* apply to a *firm* that acts with knowledge, the *firm* will not be taken to act with knowledge for the purposes of that *rule* if none of the relevant individuals involved on behalf of the *firm* acts with that knowledge as a result of arrangements established under *COB 2.4.4 R*.

...

11.4.3 R Table: *Rules applicable to depositaries*  
This table belongs to *COB 11.4.1 R*.

Chapter	Description	Modifications
...		
9	Client assets	<p><del><i>COB 9.3</i> and <i>COB 9.5</i> do not apply.</del></p> <p>Except for <del><i>COB 9.2</i></del>, '<i>client</i>' means '<i>trustee</i>', '<i>trust</i>' or '<i>collective investment scheme</i>' as appropriate.</p> <p>In <del><i>COB 9.2</i></del>, '<i>client</i>' means '<i>trustee</i>', '<i>collective investment scheme</i>' or '<i>collective investment scheme instrument</i>' as appropriate.</p>
...		

...

11.5.2 R Table: *Rules applicable to trustee firms* which are not *depositaries* and to which *COB 11.5.1 R (1)* applies  
This table belongs to *COB 11.5.1 R (1)*.

Chapter	Description	Modifications
...		
9.2	Mandates	' <i>Client</i> ' means ' <i>trustee</i> ', ' <i>trust</i> ' or ' <i>trust instrument</i> ' as appropriate.
...		

...

- 11.5.3 R Table: *Rules* applicable to *trustee firms* which are not *depositories* and to which *COB 11.5.1 R (2)* applies  
 This table belongs to *COB 11.5.1 R (2)*.

Chapter	Description	Modifications
...		
9	Client assets	'Client' means 'trustee', 'trust' or 'trust instrument' as appropriate.
...		

- 12.1.14 R Table: This table disapplies parts of *COB* to a *firm* when carrying on the activities to which *COB 12.1.7 R (1)* relates.

Chapter	Description	Disapplication
...		
9	Client assets	<del>COB 9 is disappplied to the Society.</del>
...		

## Schedule 1

### Record keeping requirements

G

1 The aim of the guidance in the following table is to give the reader a quick overall view of the relevant record keeping requirements.

2 It is not a complete statement of those requirements and should not be relied on as if it were.

3 Table

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				

COB 9.1.9R	A personal investment firm that temporarily holds a client's designated investments	Client details and any action taken by firm		3 years (from the making of the record)
COB 9.1.53R(3)	Safe custody: arrangements for clients ordinarily resident outside the United Kingdom	The steps taken and result under COB 9.1.53R(2)	On determination that client does not wish to execute agreement	
COB 9.1.98R	Client custody assets held or received by or on behalf of a client or which the firm has arranged for another to hold or receive	Full details	On receipt	3 years
COB 9.1.99R	Safe custody investments used for stock lending activities	The identity of safe custody investments available to be lent, and those which have been lent	On receipt	3 years
COB 9.2.5R	Adequate records and internal controls in respect of the firm's use of mandates (see COB 9.2.5R(1) to (4))	Up to date list of firm's authorities; all transactions entered into; important client documents held by firm	Maintain current full details	
COB 9.3.145R	Client money	Sufficient records to show and explain firm's transactions and commitments	Maintain current full details	3 years (after records made)



COB 9.5.24R(3)	Client money shortfall	Each client's entitlement to client money shortfall at the failed bank	Maintain up to date records	Until client repaid
COB 9.2.25R(3)	Client money shortfall	Each client's entitlement to client money shortfall at the failed bank	Maintain up to date records	Until client repaid
COB 9.5.31R(3)	Client money shortfall	Each client's entitlement to client money shortfall at the failed intermediate broker, settlement agent or OTC counterparty	Maintain up to date records	Until client repaid
...				

...

## Schedule 2

### Notification requirements

G

1 Table:

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
COB 9.1.97R(1)	<del>non-compliance with reconciliation requirements in COB 9.1.85R, 9.1.87R, 9.1.89R, 9.1.91R, 9.1.93R</del>	<del>reason for non- compliance</del>	<del>non-compliance</del>	<del>immediately</del>

COB 9.1.97R(2)	non-compliance with reconciliation requirements in COB 9.1.94R	reason for non-compliance once reconciliation is carried out	non-compliance	immediately
COB 9.3.98R	failure of a third party with which money is held – ie; bank, intermediate broker, settlement agent or OTC counter-party or other entity with which it has placed or to which it has passed client money	full details	when firm becomes aware of the failure of the entity	immediately
COB 9.3.98R	failure of a third party with which money is held – ie; bank, intermediate broker, settlement agent or OTC counter-party or other entity with which it has placed or to which it has passed client money	intentions regarding making good any shortfall that has arisen or may arise, and of the amounts involved	failure of third party with which money is held	as soon as reasonably practical
COB 9.3.121R	daily calculation required by COB 9.3.100R or COB 9.3.101R	inability to perform daily calculation	inability to perform daily calculation	immediately
COB 9.3.122R	daily calculation required by COB 9.3.100R or COB 9.3.101R	inability to make good any shortfall identified by daily calculation	inability to make good any shortfall identified by close of business on the day of calculation	immediately

COB 9.3.131R	requirements detailed in COB 9.3.123R, COB 9.3.125R, COB 9.3.126R, COB 9.3.128R and COB 9.3.129R	inability to comply with any of the requirements	inability to comply with any of the requirements	as soon as possible
COB 9.3.144R	LME bond arrangement	issue of an individual letter of credit issued by the firm	upon issue of an individual letter of credit under an LME bond arrangement	immediately
COB 9.5.33R	failure of a third party with which money is held – ie; bank, intermediate broker, settlement agent or OTC counter-party or other entity with which it has placed or to which it has passed client money	full details	when firm becomes aware of the failure of the entity	immediately
COB 9.5.33R	failure of a third party with which money is held – ie; bank, intermediate broker, settlement agent or OTC counterparty	intentions regarding making good any shortfall that has arisen or may arise, and of the amounts involved	failure of third party with which money is held	as soon as reasonably practicable
...				

...

## Schedule 4

### Powers exercised

1 Table: G

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *COB*:

...

Section 138 (General rule-making power)

Section 139~~(1)~~ and (4) (Miscellaneous ancillary matters)

...

## Annex J

### Amendments to the Market conduct sourcebook

In this Annex, underlining indicates new text.

- 3.3.2 G *MAR 3 is not the only chapter of the Handbook that applies to firms doing inter-professional business. Firms should always consider what other parts of the Handbook may apply to them. A table listing the applicable Principles is set out in MAR 3Ann2G. The table also sets out the key provisions of COB and CASS that may also apply to firms doing inter-professional business, but it should not be read as an exhaustive list. Firms should also consider the other provisions of the Handbook, especially but not exclusively ML and IPRU.*

## Annex K

### Amendments to the Authorisation manual

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.5.3 G As a general guide, all applicants for *Part IV permission* should be familiar with the *threshold conditions (COND)* and the *Principles for Businesses (PRIN)* in the High Level Standards part of the *Handbook*. To complete an application for *Part IV permission*, an applicant will also need to have regard to the following matters:

(1) ...

...

(4) Other regulatory obligations:

(a) the detailed regulatory obligations that apply to certain types of *firm* or *regulated activity* in *COB*, *CASS*, the Market Conduct Sourcebook (*MAR*) and *SUP*;

(b) ...

...

AUTH 5

Annex 3 Application of the Handbook to Incoming EEA Firms G

2 Table: G

<b>(1) Module of Handbook</b>	<b>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</b>	<b>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</b>
...		
<i>COB</i>	<i>COB</i> applies, <del>except that <i>COB</i> 9 (Client assets) does not apply with respect to the <i>firm's</i> passported activities (<i>COB</i> 1.2.1R(1)).</del>	...
<u><i>CASS</i></u>	<u><i>CASS</i> does not apply with respect to the <i>firm's</i> passported activities unless the <i>firm</i> is an insurer (<i>CASS</i> 1.2.3R(2)).</u>	<u>As column (2).</u>
<i>MAR</i>	...	
...		

## Annex L

### Amendments to the Supervision manual

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 10.7.10 G Compliance in *SYSC* 3.2.8R means compliance with the *rules* in COB, ~~and~~ CIS and CASS. The *FSA* anticipates that some *firms* will include oversight of compliance with *PRIN*, *MAR*, and other requirements and standards, within its compliance function. These other responsibilities would not, however, be brought within the *compliance oversight function* (see also *SUP* 10.4.3G).

## Annex M

### Amendments to the Enforcement manual

In this Annex, striking through indicates deleted text.

- 4.5.6 G Examples of relevant requirements are the requirements contained in *COB*. All of the chapters of *COB* apply to *incoming EEA firms* ; except ~~*COB 9*~~ (Client asset rules).



## Annex N

### Amendments to the Collective Investment Schemes sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.2.19 G There are a number of other parts of the *FSA's Handbook* that are relevant to those having a responsibility in relation to *authorised funds*. These include:

- (1) *PRIN* (The Principles for Businesses);
- (2) *SYSC* (Senior management arrangements, systems and controls);
- (3) *APER* (The Statements of principle and Code of Practice for approved persons);
- (4) *COB* (The Conduct of Business sourcebook);
- (5) *SUP* (The Supervision manual); ~~and~~
- (6) *DEC* (The Decision making manual); ; and
- (7) *CASS* (The Client Assets sourcebook).

## Annex O

### Amendments to the Credit unions sourcebook

In this Annex, underlining indicates new text.

#### Appendix 1.1

This is the table referred to in *CRED 2.2.2G*

1.1.1 P Table:

	Sourcebook or manual	Reference code
...	...	...
<b>Business standards</b>	...	...
	Conduct of business	COB
	<u>Client assets</u>	<u>CASS</u>
	...	...

## Annex P

### Amendments to the Electronic money sourcebook

In this Annex, underlining indicates new text.

1.5.2 G Table: Application of other parts of the *Handbook* to ELMIs

Block	Module	Application
...	...	...
<b>Block 2 (Business standards)</b>	...	...
	Conduct of Business sourcebook ( <i>COB</i> )	...
	<u>Client Assets sourcebook (<i>CASS</i>)</u>	<u>Does not apply to an <i>ELMI</i> when issuing e-money.</u>
	...	...

## Annex Q

### Amendments to the Lloyd's sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 9.2.3 R The *Society* must adopt the standards of due care and diligence set out in the custody rules at ~~COB 9~~ CASS 2 in relation to the custody of assets that constitute *members'* funds.

## Annex R

### Amendments to the Professional firms sourcebook

In this Annex, underlining indicates new text.

Part 1 – amendments with effect from 1 January 2004

5.3.9      G      CASS 1.2.4R(1) provides that CASS 2, CASS 3 and CASS 4 do not apply to authorised professional firms when carrying on non-mainstream regulated activities.

Part 2 –with effect from 14 January 2005, the new provision 5.3.10G, set out in Part 1 above, will be amended as follows.

5.3.9      G      CASS 1.2.4R(1) provides that CASS 2, CASS 3 and CASS 4 do not apply to authorised professional firms when carrying on non-mainstream regulated activities. CASS 1.2.5 further provides that if the non-mainstream regulated activities are insurance mediation activity, CASS 5 does not apply to an authorised professional firm, if the firm's designated professional body has rules applicable to the firm which implement the IMD and which are in the form approved by the FSA under section 332(5) of the Act.

## Annex S

### Amendments to the Special guide for Energy Market Participants

In this Annex, underlining indicates new text.

1.2.3            G            Table: Applicability of parts of Handbook to energy market participants. This table belongs to *EMPS 1.2.1G*

	<b>Part of Handbook</b>	<b>Applicability to energy market participants</b>
...	...	...
<b>Business standards</b>	... Conduct of Business sourcebook ( <i>COB</i> ) <u>Client Assets sourcebook (<i>CASS</i>)</u> ...	... ... <u>This applies.</u> ...







## Annex V

### Amendments to the Special guide for Service companies

In this Annex, underlining indicates new text.

1.2.2 G Table: Parts of the Handbook applicable to service companies  
This table belongs to *SERV* 1.2.1G

	<b>Part of Handbook</b>	<b>Applicability to service companies</b>
...	...	...
<b>Business standards</b>	<p>...</p> <p>Conduct of Business sourcebook (<i>COB</i>)</p> <p><u>Client Assets sourcebook (<i>CASS</i>)</u></p> <p>...</p>	<p>...</p> <p><u>This applies. However, service companies should not, ordinarily, hold client assets.</u></p> <p>...</p>

## Annex W

### Amendments to the Glossary of definitions

Insert the following new definition in the appropriate alphabetical position:

*CASS*                      the Client Assets sourcebook.

Amend the following definitions as shown (underlining indicates new text and striking through indicates deleted text):

*client asset rules*        ~~*COB 9, comprising the custody rules, mandate rules, client money rules, collateral rules and client money distribution rules*~~  
*CASS*.

*collateral*                (1) ...  
  
(2) (in *COB* and *CASS* ) any of the following:  
  
(a) ...  
  
...

*scheme*                    (1) (except in *COB*, *CASS* and *SUP*) a  
*collective investment scheme*  
  
(2) (in *COB*, *CASS* and *SUP*)  
  
(a) ...  
  
...

**ACCESS TO CRIMINAL RECORDS INSTRUMENT 2003**

**Powers Exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
- 1) section 60 (Applications for approval);
  - 2) section 156 (General supplementary powers);
  - 3) section 157(1) (Guidance); and
  - 4) section 182 (Notification).

**Commencement**

- B. This instrument comes into force on 1 February 2004.

**Amendments to Fit and Proper test for Approved Persons**

- C. FIT is amended in accordance with Annex A to this instrument.

**Amendments to the Supervision manual**

- D. SUP is amended in accordance with Annex B to this instrument.

**Citation**

- E. This instrument may be cited as the Access to Criminal Records Instrument 2003.

By Order of the Board  
18 December 2003

## Annex A

### Amendments to the Fit and Proper test for Approved Persons

In this Annex, underlining indicates new text and striking through indicates deleted text.

...

#### 2.1 **Honesty, integrity and reputation**

2.1.1G In determining a *person's* honesty, integrity and reputation, the *FSA* will have regard to matters including, but not limited to, those set out in *FIT* 2.1.3G which may have arisen either in the *United Kingdom* or elsewhere. The *FSA* should be informed of these matters (see *SUP* 10.13.16R), but will consider the circumstances only where relevant to the requirements and standards of the *regulatory system*. For example, under *FIT* 2.1.3G (1), conviction for a criminal offence will not automatically mean an application will be rejected. The *FSA* treats each candidate's application on a case-by-case basis, taking into account the seriousness of, and circumstances surrounding, the offence, the explanation offered by the convicted *person*, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the individual's rehabilitation.

...

2.1.3 G The matters referred to in *FIT* 2.1.1G to which the *FSA* will have regard include, but are not limited to:

- (1) whether the *person* has been convicted of any criminal offence; this ~~may~~ must include, where relevant, any spent convictions excepted under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see Articles 3 and 4 of the Order); particular consideration will be given to offences of dishonesty, fraud, financial crime ~~or other offences under legislation or an offence whether or not in the *United Kingdom* relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking and or other financial services, companies, insolvency, consumer credit, insurance and, consumer protection, money laundering, market manipulation or insider dealing;~~

...

## Annex B

### Amendments to the Supervision manual

In this Annex, underlining indicates new text and striking through indicates deleted text

...

#### Sup 10 Annex 1G: Frequently asked questions

SUP 1 Table:

	Question	Answer
	<b>Requirements of the Regime</b>	
...		
	<b>Submitting an Application</b>	
...		
11.	What checks must a <i>firm</i> make on a <i>candidate</i> before submitting an application for approval from the <i>FSA</i> ?	The <i>FSA</i> expects <i>firms</i> to perform due and diligent enquiries into their <i>candidates</i> . Note also the requirements of <i>ENF</i> 8.12.2G and <i>TC</i> 2.2.1R.
11A	<u>Should these checks include a check of criminal records?</u>	<u>It is for senior management to decide what checks should be made. By virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see Articles 3 and 4 of the Order), the <i>FSA</i> and the industry also have a right to ask about spent, as well as unspent, criminal convictions for employment purposes about <i>candidates</i> for <i>approved person</i> status (see Question 5.01a of Form A (Application to perform controlled functions under the approved persons regime)).</u> <u>Note also the provisions of <i>ENF</i> 8.12.2G (Publication) and <i>TC</i> 2.2.1R (Recruitment).</u>
12	...	

...

**SUP 10 Annex 4**  
**Approved Person regime forms**

...

**Form A**

**Application to perform controlled functions under the approved persons regime**

...

**Notes for Form A**

...

**SECTION 5 – FITNESS AND PROPRIETY**

Answer the question by ticking the relevant ‘yes’ or ‘no’ box. If the answer to any of the questions is ‘yes’, give complete details in section 6 and attach relevant supporting documentation.

5.01 to 5.02: It is for senior management to decide what checks should be made. Under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see Articles 3 and 4 of the Order) the FSA and the industry have a right to ask about spent, as well as unspent, criminal convictions for employment purposes about candidates for approved person status (see Question 5.01a of Form A (Application to perform controlled functions under the approved persons regime.))

5.03 to 5.06: ...

...

**Fitness and propriety**

**Section 5**

5.01a Has the *candidate* ever been convicted of any offence involving fraud, theft, false accounting, offences against the administration of public justice (such as perjury, perverting the course of justice and intimidation of witnesses or jurors), serious tax offences, or other dishonesty or an offence (whether or not in the *United Kingdom*) relating to *companies, building societies, industrial and provident societies, credit unions, friendly societies, insurance, banking or other financial services, insolvency, consumer credit or consumer protection, money laundering, market manipulations or insider dealing?* (~~Convictions spent under the Rehabilitation of Offenders Act 1974 must be included~~) (Spent convictions for relevant offences should be disclosed in accordance with the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see Articles 3 and 4 of the Order))

YES  NO

...

## SUP 11 Annex 5

...

### Controllers Form B

#### Information in respect of directors, partners and individuals

...

### Notes for Controllers Form B

...

## SECTION 3 – FITNESS AND PROPRIETY

Answer the question by ticking the relevant ‘yes’ or ‘no’ box. If the answer to any of the questions is ‘yes’, give complete details in section 5 and attach relevant supporting documentation.

3.01 to 3.02: It is for senior management to decide what checks should be made. *Firms* should be aware that records available to the Criminal Records Bureau can be checked through the Bureau. Under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see Articles 3 and 4 of the Order) the *FSA* and the industry have a right to access the records of certain spent, as well as unspent, criminal convictions for employment purposes about *candidates for approved person* status (see Question 5.01a (Application to perform controlled functions under the *approved persons* regime))

3.03 to 3.06 ...

...

### Fitness and propriety

### Section 3

3.01a Has the individual ever been convicted of any offence involving fraud, theft, false accounting, offences against the administration of public justice (such as perjury, perverting the course of justice and intimidation of witnesses or jurors), serious tax offences, or other dishonesty or an offence (whether or not in the *United Kingdom*) relating to *companies, building societies, industrial and provident societies, credit unions, friendly societies*, insurance, banking or other financial services, insolvency, consumer credit or consumer protection, *money laundering*, market manipulations or *insider dealing*? (~~Convictions spent under the Rehabilitation of Offenders Act 1974 must be included~~)(Spent convictions for relevant offences should be disclosed in accordance with the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended (see Articles 3 and 4 of the Order))

YES  NO

...

**GENERAL PROVISIONS (PROHIBITION OF INSURANCE  
AGAINST FINES) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers); and
  - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 January 2004.

**Amendments to the General provisions**

- D. GEN is amended in accordance with Annex A to this instrument.

**Amendments to the Authorisation manual**

- E. AUTH is amended in accordance with Annex B to this instrument.

**Amendment to the Enforcement manual**

- F. ENF is amended in accordance with Annex C to this instrument.

**Citation**

- G. This instrument may be cited as the General Provisions (Prohibition of Insurance Against Fines) Instrument 2003.

By Order of the Board  
18 December 2003



## Annex A

### Amendments to the General Provisions

In this Annex, underlining indicates new text. However, where a new chapter of text is being inserted, its location is stated but the text is not underlined.

#### General Provisions

#### Transitional provisions TP1

...

GEN Table: (2) Transitional provisions applying to GEN only

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: Dates in force	(6) Handbook provision: coming into force
...					
4	...				

5	<u>GEN 6.1</u>	R	<p><u>GEN 6.1 does not:</u></p> <p>(1) <u>apply to an unamended contract of insurance, first entered into on or before 24 July 2003; or</u></p> <p>(2) <u>prohibit a firm from claiming on, or making a payment under, a contract of insurance:</u></p> <p>(a) <u>in connection with a financial penalty imposed by the FSA pursuant to a warning notice issued before 25 July 2003; or</u></p> <p>(b) <u>first entered into between 25 July 2003 and 31 December 2003 in respect of a financial penalty imposed by the FSA by a final notice issued on or before 31 December 2003.</u></p> <p><u>(For these purposes only, a contract of insurance will be regarded as unamended if:</u></p> <p>(i) <u>it was amended on or before 24 July 2003; or</u></p> <p>(ii) <u>it was amended after 24 July 2003, but the amendments did not affect the duration or scope of any indemnity against a financial penalty imposed by the FSA under the Act.)</u></p>	From <u>1 January 2004</u>	<u>1 January 2004</u>
---	----------------	---	--	-------------------------------	-----------------------

After *GEN 5*, insert the following chapter.

## **Chapter 6:**

### **Insurance against financial penalties**

#### **Application**

GEN 6.1.1R This chapter applies to every *firm*, but only with respect to business that can be regulated under section 138 of the *Act* (General rule-making power).

GEN 6.1.2G For the purposes of *GEN 2.2.17R* (Activities covered by general rules), the chapter applies to *regulated* and *unregulated activities* carried on in the *United Kingdom* or overseas.

#### **Purpose**

GEN 6.1.3G The purpose of this section is to ensure that financial penalties are paid by the *person* on whom they are imposed.

#### **Interpretation**

GEN 6.1.4R In this chapter ‘financial penalty’ means a financial penalty that the *FSA* has imposed, or may impose, under the *Act*. It does not include a financial penalty imposed by any other body.

### **Insurance against financial penalties**

GEN 6.1.5R No *firm* may enter into, arrange, claim on or make a payment under a *contract of insurance* that is intended to have, or has or would have, the effect of indemnifying any *person* against all or part of a financial penalty.

GEN 6.1.6R The *Society*, *managing agents* and *members' agents* must not cause or permit any *member*, in the conduct of his *insurance business* at Lloyd's, to enter into, arrange, claim on or make a payment under a *contract of insurance* that is intended to have, or has or would have, the effect of indemnifying any *person* against all or part of a financial penalty.

GEN 6.1.7G *GEN 6.1.5R* and *GEN 6.1.6R* do not prevent a *firm* or *member* from entering into, arranging, claiming on or making any payment under a *contract of insurance* which indemnifies any *person* against all or part of the costs of defending *FSA* enforcement action or any costs they may be ordered to pay to the *FSA*.

## Annex B

### Amendments to the Authorisation Manual

In this table, underlining indicates new text and striking through indicates deleted text.

AUTH 5      Annex 3

Application of the Handbook to Incoming EEA firms G

...

AUTH 2 Table: G

<b>(1) Module of Handbook</b>	<b>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</b>	<b>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</b>
...		
<del>GEN</del> <u>GEN</u>	<i>GEN</i> applies ( <i>GEN</i> 1.1, <i>GEN</i> 2.1, <i>GEN</i> 3.1, <i>GEN</i> 4.1, <del>and</del> <i>GEN</i> 5.1 and <i>GEN</i> 6.1). However, (a) <i>GEN</i> 4 does not apply to the extent that the <i>firm</i> is subject to equivalent <i>rules</i> imposed by its <i>Home State</i> ( <i>GEN</i> 4.1.1R(3)) <del> and</del> (b) <u><i>GEN</i> 6 only applies to business that can be regulated under section 138 of the <i>Act</i> (General rule-making power). It does not therefore apply if, or to the extent that, responsibility has been reserved to an <i>incoming firm's Home State regulator</i> by a European Community instrument.</u>	<i>GEN</i> 4 does not apply if the <i>firm</i> has <i>permission</i> only for <i>cross-border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> .  Otherwise, as column (2).
...		

## Annex C

### Amendments to the Enforcement Manual

All the text in this Annex is new.

After ENF 13.1.2G insert the following.

ENF 13.1.3G To help the *FSA* to achieve this purpose (as set out in *ENF 13.1.2G*), *GEN 6* contains *rules* prohibiting a *firm* or *member* from entering into, arranging, claiming on or making a payment under a *contract of insurance* that is intended to have, or has, the effect of indemnifying any *person* against a financial penalty.

**GENERAL PROVISIONS AND GLOSSARY (AMENDMENT NO 7)  
INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions of the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 138 (General rule-making power);
  - (2) section 157(1) (Guidance).
- B. The rule making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 February 2004.

**Amendment to the Glossary**

- D. The Glossary is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the General Provisions and Glossary (Amendment No 7) Instrument 2003.

By Order of the Board  
18 December 2003

## Annex

### Amendment to the Glossary

Amend the following definition as shown (underlining indicates new text).

*designated  
investment exchange* any of the following investment exchanges:  
...  
Bourse de Montreal Inc  
Channel Islands Stock Exchange  
Chicago Board of Trade  
...

**TIER ONE CAPITAL FOR BANKS (AMENDMENT) INSTRUMENT  
2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

**Commencement**

- B. This instrument comes into force on 1 January 2004.

**Amendments to the Interim Prudential sourcebook for banks**

- C. IPRU(BANK) is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Tier One Capital for Banks (Amendment) Instrument 2003.

By Order of the Board  
18 December 2003



## ANNEX

### Amendment to IPRU(BANK)

In this Annex, text in square brackets indicates text already made<sup>1</sup> but coming into force on 1 January 2004. Chapter CA: section 5 is now modified as indicated by inserting the text underlined below.

#### Volume 1

...

CA: Section 5

...

#### 5 TIER 1 CAPITAL

...

##### 5.1 [Core and Innovative Tier 1] capital

...

[4]

...

(a) the bank should be able to eliminate the [interest or] dividend on the shares;

- a) [Where a tier 1 instrument includes a step-up in interest or dividends, it is regarded as 'innovative' provided no step-up occurs before the tenth anniversary of the date of issue. If the step-up occurs before the tenth anniversary of the date of issue, then the instrument is not eligible for Tier 1 capital.] A one-off step-up in dividend from the tenth anniversary of issue associated with a call is permissible as long as the whole dividend can be waived. The dividend step up should be no greater than either (i) 100bp, less the swap spread between the initial index basis and the stepped up index basis or (ii) 50% of the initial credit spread, less the swap spread between the initial index basis and the stepped-up index basis. A bank wishing to include such an option should consult its line supervisor ahead of issue.

...

---

<sup>1</sup> The text was made through the Tier One Capital for Banks Instrument 2003.

**INTERIM PRUDENTIAL SOURCEBOOK FOR INSURERS  
(AMENDMENT NO 6) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
- (1) section 138 (General rule-making power);
  - (2) section 150(2) (Actions for damages); and
  - (3) section 156 (General supplementary powers).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 February 2004.

**Amendments to the Interim Prudential sourcebook for Insurers**

- D. IPRU(INS) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Interim Prudential Sourcebook for Insurers (Amendment No 6) Instrument 2003.

By Order of the Board  
18 December 2003

## Annex

### Amendments to IPRU(INS)

In this Annex, underlining indicates new text.

#### Chapter 11

#### DEFINITIONS

##### PART I

##### DEFINITIONS

11.1 For the purposes of *IPRU (INS)*, the term or phrase in the first column has the meaning given to it in the second column unless the context otherwise requires.

Term or phrase	Definition
...	...
<i>notional required minimum margin</i>	<p>(a) in the case of an <i>insurance undertaking</i> (other than a <i>pure reinsurer</i>) that has its head office in a <i>designated state or territory</i>, the amount of the <i>required minimum margin</i>, or the equivalent requirement under the regulatory requirements of that state or territory;</p> <p>(b) in the case of a <i>pure reinsurer</i> that has its head office in a <i>designated state or territory</i>, the amount that would be the <i>required minimum margin</i>, or the equivalent requirement under the regulatory requirements of that state or territory, if the regulatory requirements of that state or territory applicable to undertakings carrying on <i>direct insurance business</i> were applied to the <i>pure reinsurer</i> (whether they are or not); and</p> <p>(c) in all other cases, the amount of the <i>required minimum margin</i> that would apply if the <i>insurance undertaking</i> were an <i>insurer</i> <u>(other than a <i>pure reinsurer</i>)</u>, with its head office in the United Kingdom (whether it is or not)</p>

...	...
<i>relevant regulatory requirements</i>	<p>(a) in the case of a <i>group undertaking</i> that is an <i>insurance undertaking, ultimate insurance parent undertaking</i> or <i>ultimate EEA insurance parent undertaking</i> established in a <i>designated state or territory</i>, at the option of the <i>insurer</i>:</p> <p>(i) the regulatory requirements of that state or territory applicable to an undertaking carrying on <i>direct insurance business</i> (even if it only carries on <i>reinsurance business</i> or is an <i>insurance holding company</i>), or</p> <p>(ii) the requirements referred to in (b); and</p> <p>(b) in the case of any other <i>insurance undertaking</i> or <i>insurance holding company</i>, the rules in <i>IPRU (INS)</i> applicable to an <i>insurer</i> (<u>other than a <i>pure reinsurer</i></u>) with its head office in the United Kingdom (whether or not it is such an <i>insurer</i>)</p>
...	...

## **FINANCIAL PROMOTIONS (PAST PERFORMANCE) INSTRUMENT 2003**

### **Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 145 (Financial promotion rules);
  - (3) section 156 (General supplementary powers);
  - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

### **Commencement**

- C. This instrument comes into force on 1 June 2004.

### **Amendments to the Conduct of Business sourcebook**

- D. The Conduct of Business sourcebook is amended in accordance with the Annex to this instrument.

### **Citation**

- E. This instrument may be cited as the Financial Promotions (Past Performance) Instrument 2003.

By Order of the Board  
18 December 2003

## Annex

### Amendments to the Conduct of Business sourcebook

In this Annex underlining indicates new text and striking through indicates deleted text.

...

#### Non-real time financial promotions: guidance on clear, fair and not misleading

- 3.8.7 G (1) It cannot be assumed that recipients necessarily have an understanding of the *investment* or service being promoted. The use of terms that are ambiguous, or the targeting of an audience which is unlikely to understand the promotion, are matters which are relevant to an assessment of whether the promotion is 'clear, fair and not misleading'. If a *non-real time financial promotion* is specially designed for a targeted collection of recipients who are reasonably believed to have particular knowledge of the *investment* or service being promoted, this fact should be made clear.

...

...

- 3.8.9 G (1) ...
- (2) ...
- (3) In giving a fair and adequate explanation of the *investment* or service being promoted *firms* should avoid:
- (a) ...
- (b) ...
- (c) drawing attention to favourable tax treatment without stating that this might not continue in the future; and
- (d) drawing attention to an *investment* or service's past performance, or placing emphasis on past performance, relative to other information given about the product in the *financial promotion*.

...

### Specific non-real time financial promotions: past performance

3.8.11 R A *specific non-real time financial promotion* which gives information about the past performance of ~~specified~~ a specified investments or of a *firm* must include:

- (1) suitable text which states unambiguously, and without reservation, that past performance should not be seen as an indication of future performance:
  - (a) ~~that is specifically designed as suitable for the type of *financial promotion* being promoted and its target audience; and~~ that is specifically designed for the type of *financial promotion* concerned and its target audience; and
  - (b) ~~which draws attention to the fact that past performance will not necessarily be repeated~~ which is presented legibly in the main text of the *financial promotion*; and
- (2) information relating to a relevant and sufficient period of past performance to provide a fair and balanced indication of the performance.

3.8.12 G (1) The purpose of COB 3.8.11R is to:

- (a) ...
- (b) ~~to encourage *firms* to draft warnings which are tailored to fit the design of the *financial promotion* and the audience to which they are primarily directed. Therefore, so,~~ for example, text used in a warning included in a specialist magazine may not be ~~useful~~ appropriate in a *financial promotion* in the popular press.
- (2) Any of the following may mean that a *specific non-real time financial promotion* does not meet the requirement of COB 3.8.4 R(1) of being fair, clear and not misleading:

(a) ...

...

(e) a comparison with *deposits* without an indication in clear terms, and with equal prominence, that the *investment*

does not include the security of capital which is ~~afforded~~  
~~under~~ characteristic of a deposit with a bank or building  
society.

- (3) *Firms* need to take special care when presenting euro-based information as new factors should be taken into account in the calculation ~~and/or~~ comparison of the performance of some products. There may be some techniques of presenting past performance data which can no longer be used ~~because when if~~ the factoring in of euro conversion is factored into the calculation it produces a misleading result. *Guidance* cannot deal with all the circumstances in which performance data are used, and it is therefore important for *firms* to look at the end result and the context in which the information is presented to ensure it does not breach *COB* 3.8.4 R(1) (clear, fair and not misleading).
- (4) ....
- (5) *Firms* are reminded of the *guidance* in *COB* 3.6.4G(2) about ensuring that specific non-real time financial promotions remain compliant with *COB* 3. To meet *COB* 3.8.11R(2), a specific non-real time financial promotion that contains past performance information and is intended for use over a period of time should make clear:
- (a) the period of time to which the past performance information relates;
  - (b) where relevant, the fact that this information may not be current; and
  - (c) if (b) applies, an explanation of where up-to-date past performance information may be found.
- (6) Where a specific non-real time financial promotion, such as a brochure or a promotion on the Internet, includes past performance information that is presented over a number of pages, the past performance warning required by *COB* 3.8.11R(1) should be included on each page on which past performance information is presented.



- (7) Information about past performance should normally be based on the actual performance of a fund or funds for the entire period. Where past performance information for the actual fund does not exist, a *firm* may only include hypothetical past performance information in the promotion if the result will be clear, fair and not misleading. Past performance information that is based entirely on hypothetical past performance information will be acceptable only where it relates to a fund that is not and has not been actively managed, and where prices on the relevant markets are unlikely to have been influenced by the operation of the fund had it been in existence.
- (8) In (7), hypothetical past performance information means information that has been constructed about the performance of a fund during a period for which no actual performance information is available, using the terms of the product and historical financial information. This would not include past performance information that is based on the actual performance of a fund (for example, where the pricing structure or other terms surrounding a product change but the underlying fund remains the same; where an existing fund is merging with another; or where a fund is cloned.)

### **Standardised past performance information**

- 3.8.13 R *A specific non-real time financial promotion, which refers to past performance of a packaged product, must include information about the performance of the packaged product which covers the previous five years (or the whole period if the packaged product has been offered for less than this), ending with the date on which the firm confirms compliance with the rules in this chapter under COB 3.6.1R (or as near as is reasonably practicable).*
- (1) If a firm includes in a *specific non-real time financial promotion* information referring to the past performance of a *packaged product*, it must also include:
- (a) in the case of a *scheme*, unit-linked *life policy* or unit-linked *stakeholder pension scheme* (other than a unitised with-profits *life policy* or *stakeholder pension scheme*) past performance information calculated and presented in accordance with *COB 3.8.13AR*; or
- (b) in the case of a *packaged product* which is not within (a) that:

(i) does not have a fixed term, the performance over the previous five years (or the whole period if the product has been offered for less than this); or

(ii) has a fixed term, the performance over the whole period of the product term;

ending with the date on which the *firm* confirms compliance with the *rules* in this chapter under COB 3.6.1R(or as near as is reasonably practicable).

(2) The information included in accordance with COB 3.8.13R(1) should be no less prominent than any other past performance information.

(3) A specific non-real time financial promotion must not contain any past performance information, including hypothetical past performance information, unless past performance information exists for the previous twelve months (or where COB 3.8.13R(1)(a) applies, for the previous four full quarters).

(4) For the purposes of COB 3.8.13R(1)(a), *firms* should use single pricing, or (if this is not available) bid to bid prices, unless the *firm* has reasonable grounds to be satisfied that another basis would better reflect the past performance of the fund.

3.8.13A R Table

Specimen table of disclosure of discrete past performance

This table belongs to COB 3.8.13 R.

Percentage growth

<u>[Fund name]</u>	<u>Quarter /Year – Quarter / Year pgr%</u>	<u>Quarter /Year – Quarter/ Year pgr%</u>	<u>Quarter /Year – Quarter/ Year pgr%</u>	<u>Quarter/ Year – Quarter/ Year pgr%</u>	<u>Quarter/ Year – Quarter/ Year pgr%</u>
--------------------	--	---	---	---	---

Notes:

1. The table must show performance information for five (or if performance information for fewer than five is available, all complete 12-month periods, the most recent of which ends with the last full quarter preceding the date on which the firm confirms compliance with the rules in this chapter under COB 3.6.1R.

2. For products with performance data for less than five 12-month periods firms should clearly indicate that performance data does not exist for the relevant periods.

3. No allowance must be made for tax recoveries on income for *pension contracts, individual savings accounts* or *PEPs*.

4. pgr is the percentage growth rate for the year, where:  
 $pgr = ((P1 - P0)/P0)*100$  and rounded to the nearest 0.1%, with exact 0.05% rounded to the nearest even 0.1%; and where P0 is the price at the start of the 12-month period and P1 is the price on the same day in the following 12-month period.

5. The prices must allow for any net distributions to be reinvested.

6. The price at P1 must be adjusted for any charges since the date of P0 which are based on a proportion of the fund and are levied by the cancellation of units.

- 3.8.14 G (1) The information required by *COB 3.8.13R(1)(b)* should be given on:
- (a) ...
  - (b) an offer to offer, bid to bid or offer to bid basis (which should be stated) where there is a comparison of performance with an index or with movements in the price of *units*; or
  - (c) ....
- (2) ....
- (3) ....

- 3.8.15 R Information about past performance in a *specific non-real time financial promotion* must not be presented in such a manner as to suggest that:
- (1) it constitutes a *projection* illustrating the possible future value of an investment contract or fund; or
  - (2) similar returns will be achieved in the future.
- 3.8.16 G In determining whether *COB* 3.8.15R has been satisfied, the *FSA* will take into account:
- (1) the way in which the information about past performance has been presented;
  - (2) how it is positioned in the *financial promotion*; and
  - (3) the wording which accompanies it.

Paragraph headings, or the positioning of information about past performance and current yields next to each other, can sometimes contribute to an overall impression that past performance and future prospects are linked.

...

**HANDBOOK STRUCTURE (SPECIAL GUIDES) INSTRUMENT 2003****Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

**Commencement**

- B. This instrument comes into force on 1 February 2004.

**Special Guides**

- C. The Special Guides listed below are removed from the Handbook:
- (1) Energy Market Participants (EMPS);
  - (2) Small Friendly Societies (FREN);
  - (3) Oil Market Participants (OMPS);
  - (4) Service companies (SERV).

**Consequential amendments to the Handbook**

- D. The modules of the Handbook in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Reader's Guide Reader's Short Guide	Annex A
AUTH	Annex B
SUP	Annex C
ECO	Annex D
ELM	Annex E
Glossary	Annex F

**Citation**

- E. This instrument may be cited as the Handbook Structure (Special Guides) Instrument 2003.

By Order of the Board  
18 December 2003

## Annex A

In this Annex, underlining indicates new text and striking through indicates deleted text.

### Amendments to the Reader's Guide

- 28 The letter G is normally used to indicate guidance given under section 157. The guidance in the Handbook relates to the operation of the Act, the rules in the Handbook and other matters. Most general guidance (meaning, in this Guide, guidance given to persons or regulated persons generally or to a class of regulated person) will be given through the Handbook, but in certain cases, where the guidance is urgent or temporary, it will be published in a separate Guidance Note. Material published in vehicles other than the Handbook or Guidance Notes, for example in the Handbook Guides, newsletters or on the FSA's website, is not guidance unless it says that it is.

### Contents of the Handbook

	Sourcebook or manual	Reference Code
...		
Special guides	Energy Market Participants	EMPS
	Small Friendly Societies	FREN
	Oil Market Participants	OMPS
	Service companies	SERV
...		

### Amendments to the Reader's Short Guide

### Contents of the Handbook

	Sourcebook or manual	Reference Code
...		
Special guides	Energy Market Participants	EMPS
	Small Friendly Societies	FREN
	Oil Market Participants	OMPS
	Service companies	SERV
...		

## Annex B

### Amendments to the Authorisation manual (AUTH)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1.5 Understanding the requirements and standards of the regulatory system

...

1.5.3 G As a general guide, all applicants for *Part IV permission* should be familiar with the *threshold conditions (COND)* and the Principles ~~Principles~~ for Businesses (*PRIN*) in the High Level Standards part of the *Handbook*. To complete an application for *Part IV permission*, an applicant will also need to have regard to the following matters:

...

- (4) Other regulatory obligations:
- (a) the detailed regulatory obligations that apply to certain types of *firm* or *regulated activity* in *COB*, the Market Conduct sourcebook (*MAR*) and *SUP*;
  - (b) the obligations in Dispute resolution: Complaints (*DISP*) and Compensation (*COMP*); and
  - (c) the specialist sourcebooks ~~or special guides~~ included in the *Handbook* such as, for example, those for *collective investment schemes*, exempt *professional firms*, and the market at Lloyd's ~~and market service companies~~.

...

#### 5 Ann 3G Application of the Handbook to Incoming EEA Firms

2 Table G

(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
EMPS	Not relevant.	Not relevant.
FREN	Does not apply.	Does not apply.
OMPS	Not relevant.	Not relevant.
SERV	Not relevant.	Not relevant.

## Annex C

### Amendments to the Supervision manual (SUP)

EMPS 2 is renumbered as SUP 21, as follows. Differences from EMPS 2 are indicated by underlining for new text and by striking through for deletions.

#### 21.1 Form of waiver for energy market participants

- 21.1.1 G SUP21 Ann1G sets out a form of *waiver* that the FSA will be minded to give to *energy market participants* in the exercise of its statutory discretion under section 148 of the *Act* to grant a *waiver* of certain *rules*.
- 21.1.2 G *Energy market participants* should bear in mind that section 148 of the *Act* requires that in order to give a *waiver* of particular *rules*, the FSA must be satisfied that:
- (1) compliance with the *rules*, or with the *rules* as unmodified, would be unduly burdensome or would not achieve the purpose for which the *rules* were made; and
  - (2) the *waiver* would not result in undue risk to persons whose interests the *rules* are intended to protect.
- 21.1.3 G Accordingly, the FSA must be satisfied that the statutory criteria will be met in each case where an *energy market participant* applies for a *waiver* in the form in SUP21 Ann1G.
- 21.1.4 G In particular, clause 4 of the form of *waiver* in SUP21 Ann1G will not ordinarily be inserted in *waivers* for *energy market participants* that will not, at the time the *waiver* will take effect, clearly satisfy the conditions set out in that clause. For these purposes the FSA will take into account the relative proportions of the *energy market participant's* assets and revenues that are referable to the various parts of its business, as well as to any other factor that the FSA considers is relevant to an assessment of the prudential risk presented by the *energy market participant*.



## Form of Waiver: Energy Market Participant

### Power

1. This *waiver* is given by the FSA under section 148 of the *Act* (Modification and waiver of rules).

### Authorised person to whom this waiver applies

2. This *waiver* applies to ..... (the “firm”).

### Guidance Note

In addition to the provisions of this *waiver*, the following special application provisions in the *Handbook* will apply to the firm because it is an *energy market participant*: COB 1.6.6R – COB 1.6.11G and SUP 3.1.2R, SUP 3.2.4G, SUP 10.1.21R and SUP 10.1.22G.

### Term

3. (1) This *waiver* takes effect from the date of this notice.

(2) However, if the firm is not then an *energy market participant*, this *waiver* takes effect only when the firm becomes one.

(3) This *waiver* ends, except as specified in (4):

(a) when the firm first stops being an *energy market participant*; or

(b) if (a) does not happen earlier, 30 November ~~2003~~ 2005.

(4) The modification of TC 2.4.1R in this *waiver* ends 12 months after the date in (3).

### Waiver: Capital and financial reporting requirements<sup>1</sup>

4. The FSA directs that the parts of the *Handbook* mentioned in the table do not apply to the firm, if the firm satisfies both the following conditions:

(1) the firm’s main business consists of the generation, production, storage, distribution, or transmission of *energy*; and

(2) the firm does not engage in *oil market activity* as a member of a *recognised investment exchange* or *designated investment exchange* which is under the rules of that exchange entitled to trade with other members.

### Table:

Part of Handbook	Waiver
IPRU(INV) 3	IPRU(INV) 3 (Financial resources for Securities and Futures Firms which are not Investment Firms) does not apply to the firm if the firm satisfies both the conditions in this clause.
SUP 16.7	SUP 16.7 (Financial reports) does not apply to the firm if the firm satisfies both the conditions in this clause

<sup>1</sup> For whether this clause would be inserted in a particular case, see SUP 21.1.4G

## Guidance Notes

An *energy market participant* to which *IPRU(INV)* 3 does not apply is still subject to the requirement of *Principle 4* to have adequate financial resources.

The conditions in this clause are imposed under s. 148(5) of the *Act*. For *guidance* on the effect of conditions attached to a *waiver*, see *SUP* 8.4.1G(2).

## Waiver: Training and competence

5. The *FSA* directs that the parts of the *Handbook* mentioned in the table apply to the firm with the modifications specified in the table.

### Table:

Part of Handbook	Modifications
<i>TC</i> 2.4.1R and <i>TC</i> 2.4.5R	<i>TC</i> 2.4.1R and <i>TC</i> 2.4.5R are modified:  (1) so that <i>TC</i> 2.4.5R(2) does not apply to the firm during the term of this <i>waiver</i> in relation to any <i>person</i> who is an <i>employee</i> of the firm during the term of this <i>waiver</i> ; and  (2) so that any assessment of an <i>employee</i> in reliance on (1) ceases to have effect for the purposes of <i>TC</i> 2.4.1R 12 months after the end of this <i>waiver</i>

### Guidance Note

*TC* 2.4.1R provides (with certain exceptions) that a *firm* must not permit an *employee* to engage in or oversee an activity unless the *employee* has been assessed as competent in that activity in accordance with *TC* 2.4.5R

*TC* 2.4.5R(2) provides that a *firm* must not assess an *employee* as competent to engage in or oversee an activity unless the *employee* has passed each module of the appropriate *approved examination* specified in the annexes to *TC* 2.

Twelve months after the end of this *waiver*, an assessment of competence carried out in reliance on this *waiver* will cease to have effect. The effect of this is to require a re-assessment of the competence of an *employee* who was assessed as competent without having passed each module of the appropriate *approved examination* specified in the annexes to *TC* 2 in accordance with *TC* 2.4.1R and *TC* 2.4.5R (to the extent that *TC* 2.4.1R would otherwise apply to the firm in relation to that *employee*).

## Modification: Transaction reports

6. The *FSA* directs that the part of the *Handbook* mentioned in the table apply to the firm with the modifications specified in the table.

### Table:

Part of Handbook	Modification
<i>SUP</i> 17	<i>SUP</i> 17 (Transaction reports) does not apply to the firm in relation to its <i>energy market activity</i> .

## Interpretation

7. (1) Unless the contrary intention appears, interpretative provisions in *GEN 2* (Interpreting the Handbook) apply to this *waiver* in the same way as they apply to the *Handbook*.

### Guidance Note

Defined terms in this *waiver* (other than the term "the firm") are italicised.

(2) For the purposes of this *waiver*, the term "employee" has the same meaning as in *TC*.

## Annex D

### Amendments to the E-Commerce Directive sourcebook (ECO)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1.1 Application and purpose

...  
1.1.10 G Table Handbook provisions applicable to, or relevant for, incoming ECA providers. This Table belongs to ECO ~~4.1.7R~~1.1.6R

Provision	Description
...	
<del>SERV 1.2.2G</del>	<del>Service companies guidance</del>
<del>OMPS 1.2.2G</del>	<del>Oil market participants guidance</del>
<del>EMPS 1.2.3G</del>	<del>Energy market participants guidance</del>
<del>FREN 1.2.2G</del>	<del>Small friendly societies guidance</del>
...	

## Annex E

### Amendments to the Electronic Money sourcebook (ELM)

In this Annex, striking through indicates deleted text.

#### 1.5 Application of other parts of the Handbook to ELMIs

...  
1.5.2 G Table Application of other parts of the Handbook to ELMIs

...

Block	Module	Application
...		
Block 6 (Special Guides)	Energy Market Participants ( <i>EMPS</i> ), Small Friendly societies ( <i>FREN</i> ), Oil Market Participants ( <i>OMPS</i> ) and Service companies ( <i>SERV</i> )	<del>These guides do not apply to an <i>ELMI</i>.</del>

## Annex F

### Amendments to the Glossary

In this Annex, underlining indicates new text and striking through indicates deleted text.

<i>EMPS</i>	the <del>Special guide</del> <u>Handbook Guide</u> for energy market participants, <del>forming part of the <i>Handbook</i>.</del>
<i>FREN</i>	the <del>Special guide</del> <u>Handbook Guide</u> for small Friendly societies, <del>forming part of the <i>Handbook</i>.</del>
<i>OMPS</i>	the <del>Special guide</del> <u>Handbook Guide</u> for oil market participants, <del>forming part of the <i>Handbook</i>.</del>
<i>SERV</i>	the <del>Special guide</del> <u>Handbook Guide</u> for service companies, <del>forming part of the <i>Handbook</i>.</del>
<u><i>SIFA</i></u>	<u>the Handbook Guide: “Using the FSA Handbook: an Overview for small IFA firms”</u>

**APPLICATION FEES (MORTGAGE AND INSURANCE MEDIATION)  
(ANNUAL INCOME) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
- (1) section 156 (General supplementary powers);
  - (2) section 157(1) (Guidance); and
  - (3) paragraph 17(1) of Schedule 1 (Fees).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 January 2004.

**Amendments to the Handbook**

- D. The Authorisation manual (AUTH) is amended in accordance with Annex A to this instrument.
- E. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Application Fees (Mortgage and Insurance Mediation) (Annual Income) Instrument 2003.

By Order of the Board  
18 December 2003

## Annex A

### Amendments to the Authorisation manual

In this Annex underlining indicates new text and striking through indicates deleted text:

4.1.5AG *AUTH* 4 Annex 2R contains details of the application fees payable by applicants seeking to obtain *permission* to carry out any of the activities included in the A.2 (mortgage lenders and administrators), A.18 (mortgage lenders, advisers and arrangers) and A.19 (general insurance ~~intermediaries~~mediation) activity groups, for the period before these activities begin to be subject to regulation.

...

4.1.7AG For the period before the activities referred to in *AUTH* 4.1.5AG are subject to regulation, applicants for the A.2 (mortgage lenders and administrators), A.18 (mortgage lenders, advisers and arrangers) and A.19 (general insurance ~~intermediaries~~mediation) activity groups are categorised by the *FSA* for the purpose of fee raising using a measure of the amount of business being undertaken by the *person*, as detailed in *AUTH* 4 Ann 2R.

...

*AUTH* 4 Annex 2R

...

Auth Table: Part 2: Authorisation fees payable

3

Activity group	Amount payable					
	Fee bands		Fee - early applications	Fee - other applications	Discount - electronic applications	Discount - non-electronic applications paying by direct debit
Band no.	Band					
A.2 Mortgage lenders and administrators		Gross advances (£m)	Fee (£)	Fee (£)	Discount (£)	Discount (£)
	1	0-10	600	1,200	100	50
	2	>10-100	8,000	10,000	250	50
	3	>100-1,000	13,000	15,000	250	50
	4	>1,000	23,000	25,000	500	50
A.18 Mortgage <u>lenders</u> ,		Annual income (£m)	Fee (£)	Fee (£)	Discount (£)	Discount (£)



advisers and arrangers; and	5	0 - 1	600	1,200	100	50
	6	>1-3	4,250	5,750	250	50
A.19 General insurance	7	>3-25	9,000	11,000	250	50
intermediaries mediation	8	>25	23,000	25,000	500	50

Auth Table: Notes:

4

(2)	For the purposes of this table:
(3)	<p>...</p> <p>(e) For the purposes of this table, Annual income means:</p> <p>(a) the net amount retained by the <i>firm</i> of all brokerages, fees, commissions and other related income (e.g. administration charges, overrides, profit shares) due to the <i>firm</i> in respect of or in relation to:</p> <p>(i) activities which would be <i>mortgage mediation activity</i> if they had been carried out after 30 October 2004; PLUS</p> <p>(ii) activities which would be <i>insurance mediation activity</i> (in relation to <i>general insurance contracts</i> or <i>pure protection contracts</i>) if they had been carried out after 13 January 2005;</p> <p>earned in its latest financial year ending on or before 31 December 2003-;</p> <p><u>PLUS</u></p> <p>(b) (i) <u>in relation to the activities set out in (a)(i), for any <i>mortgage mediation activity</i> carried out by the <i>firm</i> for which it receives payment from the lender on a basis other than that in (a), the value of all new mortgage advances resulting from that activity multiplied by 0.004;</u> <u>PLUS</u></p> <p>(ii) <u>if the <i>firm</i> is a <i>mortgage lender</i>, the value of all new mortgage advances which would be <i>regulated mortgage contracts</i> if they had been made after 30 October 2004 (other than those made as a result of <i>mortgage mediation activity</i> by another <i>firm</i>), multiplied by 0.004;</u></p> <p><u>for its latest financial year ending on or before 31 December 2003;</u></p> <p><u>PLUS</u></p> <p>(c) <u>in relation to the activities set out in (a)(ii):</u></p>

- (i) for any *insurance mediation activity* carried out by the *firm* for which it receives payment from the *insurer* on a basis other than that in (a), the amount of *premiums* receivable on the *contracts of insurance* resulting from that activity multiplied by 0.07; PLUS
- (ii) if the *firm* is an *insurer*, the amount of *premiums* receivable on its *contracts of insurance* multiplied by 0.07, excluding those *contracts of insurance* which:
- (aa) result from *insurance mediation activity* by another *firm*, where a payment has been made by the *insurer* to the *firm* under (a); or
  - (ab) the *insurer* reports, and pays a fee on, in the A.4 activity group;
  - or
  - (ac) are not *general insurance contracts* or *pure protection contracts*;
- for its latest financial year ending on or before 31 December 2003.

The *firm* must include in its income calculation, on the same basis as above, earnings from those who will become its *appointed representatives* immediately after *authorisation*.

In note (3), a reference to a "*firm*" also includes reference to any *person* who carried out activities which would be:

- (1) *mortgage mediation activity* if they had been carried out after 30 October 2004; or
- (2) *insurance mediation activity* (in respect of *general insurance contracts* or *pure protection contracts*) if they had been carried out after 13 January 2005.

## Annex B

### Amendments to the Supervision manual

In this annex underlining indicates new text and striking through indicates deleted text:

SUP 20 Annex 1R

...

Sup Table: Part 2 - Fee tariffs  
4

...

Activity group (defined in Part 7)	Valuation date for tariff bases (defined in Part 7)	Fee payable (tariff bases defined in Part 7)
...	...	...
A.18 Mortgage <u>lenders</u> , advisers and arrangers	[Not applicable for the 2003/04 period]	[Not applicable for the 2003/04 period]
A.19 General insurance <del>intermediaries</del> <u>mediation</u>	[Not applicable for the 2003/04 period]	[Not applicable for the 2003/04 period]
...	...	...

Sup Table: Part 7 - Activity groups and tariff bases  
14

Activity group	Fee-payer falls in the activity group if	Tariff-base
...	...	...
A.18 Mortgage <u>lenders</u> , advisers and arrangers	its <i>permission</i> includes one or more of the following: <ul style="list-style-type: none"> <li>• <u>entering into a regulated mortgage contract; or</u></li> <li>• <i>arranging (bringing about) regulated mortgage contracts; or</i></li> <li>• <i>making arrangements with a view to regulated mortgage contracts; or</i></li> <li>• <i>advising on regulated mortgage contracts; or</i></li> <li>• <i>agreeing to carry on a regulated activity which is within either <u>any</u> of the above.</i></li> </ul>	[Not applicable for the 2003/04 period]
A.19 General insurance <del>intermediaries</del> <u>mediation</u>	its <i>permission</i> includes one or more of the following in relation to a <i>general insurance contract</i> or a <i>pure protection contract</i> : <ul style="list-style-type: none"> <li>• <i>dealing in investments as agent; or</i></li> </ul>	[Not applicable for the 2003/04 period]

- *arranging (bringing about) deals in investments; or*
- *making arrangements with a view to transactions in investments; or*
- *assisting in the administration and performance of a contract of insurance; or*
- *advising on investments; or*
- *agreeing to carry on a regulated activity which is within any of the above.*

...

...

...

**SUPERVISION MANUAL (BUREAU DE CHANGE) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

**Commencement**

- B. This instrument comes into force on 1 January 2004.

**Supervision manual (SUP)**

- C. SUP 15.8.4G(1) and SUP 15.8.5G (Notifications in respect of particular products and services) are each amended by substituting “1 April 2004” for “1 February 2004”.

**Citation**

- D. This instrument may be cited as the Supervision Manual (Bureau de Change) Instrument 2003.

By Order of the Board  
18 December 2003